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*An Inquiry Into the Grounds of
Order in Human Relations*

BY

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PREFACE

This book is the outcome of several years of reflection on the problem of the grounds of order in human affairs. As an attempt at consecutive study, it was perhaps first suggested by a disorder in human relations which appears to me widely prevalent and serious in degree. In this study I found, however, that order and disorder are relative, perhaps also correlative, terms; and it was from this point of view that it appeared to me that the "individualism" which has in modern times been credited with the one, might also be held responsible for the other. It seemed strange that the system of practical principles whose primary purpose is to exalt the individual should nevertheless produce a complete submergence of the individual in what appears to be sub-human or super-human mechanism; and this contradiction impressed me with the idea of a possible transference of the will-life from the human individual, considered as the instrument and ground of values, to the super-human corporate individual, which latter this life- or will- principle converts into a living, though possibly blind, organism as institution. Such a transfer would seem to be possible if we may speak in intelligible terms of the objectivity of the will-life. It is thus, negatively, that there emerges the principle that no moral or practical insight can be derived from the distinction between human individuals or between types of human individuals; that, e.g., no ultimate practical significance attaches to the distinction between the good man and the bad man. Then the ultimate practical principle, as a positive norm, must be deduced from the nature of will, not from the distinction between, certainly not from the opposition of, wills as contemporary practical theory seems to imply. From this point it appeared that the unsatisfactoriness of practical life lies in just this negative and subjective pluralization of wills, and the attempt is made to find principles of the possibility of an objective or impersonal will as the basis of such order as exists or of any higher degree of order that

may be attained. But there appears here the practical contradiction between the will as effective agency and the will as intelligent prescience, consideration of which I have had to postpone to another possible occasion.

In pursuit of these matters I have read all the books I could get access to which seemed to bear on the question from any angle. But my access to books has been limited, and I regret that I have had no close contacts with persons who might have been interested in similar topics and who might have prevented my falling into some of the more serious blunders. But the authors whom I have read are doubtless responsible for whatever ideas may have found their way into this book, and I shall lay no claim to them. It would be incongruous, to say the least, to claim a private property in an idea after accepting the theory of property which I hope I have made clear in another part of this work. I shall be satisfied if I am done the charity of not being held wholly responsible for certain egregious errors which I have perceived but could not overcome; it will be sufficient castigation to be confronted with instances where I may not have been as careful as I might have been. With respect to the few persons who will read this book, those who care to pursue further such ideas as are here discussed will find a brief bibliography at the end.

I do not know to whom I am indebted for such ideas as have come to me, and I shall leave it to the classifiers to determine from whom I have learned most, if anything. Neither do I know to what extent I have succeeded with the purpose I have had in mind, nor am I certain to what extent I should be justified in claiming or accepting an interest in such a matter. While such conditions as I have tried to describe prevail in the public life of mankind, the issue of a theoretical or speculative discursus will remain perhaps of little importance; as a consequence, and in the meantime, if any one cares to entertain himself with throwing a stone into the stagnant complacency of contemporary human interest, it matters little whether he cast a pebble or a pearl.

E. JORDAN

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FORMS OF INDIVIDUALITY

CHAPTER I

INTRODUCTION: INTEREST AS A PRACTICAL CATEGORY

1. PRACTICAL REALITY AND THE SUBJECTIVE VIEWPOINT

It has become a commonplace to point out that the modern period in the history of western civilization is characterized in a peculiar way by its subjectivity. But it is not so commonly observed that, for practical purposes, the subjectivity of modern times involves that, for purposes of a consistent theory of the organization of the practical life, the central conception will be that of interest. The classical peoples appear to have been motivated in practical affairs by a steady vision of objects and ends in which purposes intellectually conceived found embodiment by virtue of the very automaticity with which their origin in intelligence endowed them. The peoples of the early medieval period may be said to have been dominated by a passion kindled within a disillusioned breast by the collapse of the structures upon which life had formerly depended; their characteristic attitude, while expressing itself in a striving for a goal not clearly envisaged but vaguely felt as a refuge and a deliverance, was still objective, in spite of the fact that its objective reference was negative. It is therefore hardly possible to attribute to either the ancient or the medieval mind a full realization of the distinction made by moderns among such conceptions as motive, purpose, interest, object, end, or an understanding in any adequate way of the meaning of the subjective categories which moderns unconsciously take for granted as premises upon which thought in all its branches rests. There is therefore a fundamental difficulty for the modern mind in the fact that the essential forms of thought

in which all practical relations are expressed, and which were first formulated upon objective standards by the classic mind, have their primary element of connotation in their descriptive reference to situations in overt facts, facts which were characterized perhaps unconsciously but no less effectively by their detachedness and distinctness from the experiencing subject. The fact-order, which had as yet not been distinguished as presented *or* ideal, was thus invariably the point of reference for any judgment, and its accessibility to anyone who cared to make use of the reference was the characteristic feature of its structure. It was not therefore a serious problem for the Greeks, in fact it had never occurred to them as a problem at all, to demonstrate or prove that a world of objects and facts existed as the complement of their thought and as the arena of their action. Also, *how* the world of objects contrived to conform to thought was not a problem. As a consequence it also had not occurred to them to differentiate within their immediate experience between objects which might be made the complements of their thought and action and objects which might not be so regarded. The idea of an unreal object probably had not, and possibly could not, occur to them. Even non-being had for them substantial reality. There was therefore no basis in their world for the distinction, made so glibly by moderns, between a purpose or intention, on the one side, and a motive or impulse on the other; that is, such terms, with their purely internal and psychological reference, could have had no meaning for them. The facts upon which such subjective distinctions are made in modern thought had for **them** a natural objectivity in action. And it is probably true that up to the time of Aristotle, with whom the methods of knowledge and research reach the highest point of perfection attained among the Greeks, there was no clear apprehension in the Greek mind of the subjective aspects of such ideas as we represent by the terms purpose, motive, interest, etc.

But by the middle of the fourth century B.C., as was observed, the methods and forms of thought, even its fundamental categories and its characteristic elements of technique, had already been formulated. And the form and method, impressed upon it and made ingredient to its very life by the fact that the Greek mind was limited to simple and immediate objectivity, remain to this day essentially what they were for

the ancient Greek. The emergence therefore in the modern era of a typically new distinction in *content* of thought, viz., that between objects of nature, on the one hand, and purpose, motive, objects of particularized mind, on the other, has effected a breach between the more or less necessary logic to which thought must conform and the types of objects which have become characteristic of the modern age. In brief, the methods and techniques by which we think our world were fashioned with reference to a world of objects to which there has since accrued a new characteristic content. That is, a new type of object, one represented in the substantial constructs of intelligence, has been added to the world as known, with the result that our knowledge-forms shall have to discover for themselves a new type of objective reference, to characterize their world with a new form of objectivity. What I mean is that the substantial constructs of intelligence do not all necessarily objectify in nature, or in the abstract realm of universals, as the ancient or formal logic assumes; but that some of them, particularly the psychological categories, find full objectivity in giving substantial form to the non-intellectual *content of experience*, e.g., desire, feeling, etc., and thus substantiate *objects of mind* (purposes or subjects). The modern *practical* problem is therefore how, and upon what principles, can the two modes of objectivity get integrated into a higher unity—that is, how can we find an effectual unity of the natural and the mental in a new objectivity? This, as we shall argue later, is answered by the discovery of the corporate character of cultural objects, the theory of corporation being the logical formulation of the new objectivity. The methods and forms of thought were thus originally adapted to a world of overt objects; the world has since become primarily a world of invert objects, or subjects, and the task of practical philosophy is to exhibit and substantiate the principles upon which the two may be integrated.

There result from this situation consequences of the gravest character for the practical sciences. Typical of these is one which appears to be the characteristic motive of modern thought, and which, when subjected to criticism, begins to look like the one fatal tactical blunder to be recorded against the history of human thought. It is this: the new element of subjectivity which emerges at the dawn of the modern era

was mistakenly received by philosophy and science as the new element of method, as the ground of a new logic, as a new dispensation as to how the objects of the world should attain their embodying orders and organizations. Nature had, on this view, to adopt a rationality centred in the I. Instead therefore of seeing that the subjective is merely a *new element of content* for thought, a new category of object with reference to which thought is required to dispose its forms, and to be disposed within the same number, n , of orders and organizations by the same principles that dispose the objective in nature itself, the subjective was regarded as a *new dimension of the world*, and the discovery was supposed to require that all previously discovered types of order should be reconstituted with reference to the new principle $n + 1$. Whereas previously it had been possible and satisfactory to regard the world as rendered intelligible by the principles for which man and human life were a detail—however extraordinary might be its importance as a detail, since importance itself fell within the reach of the same principles—now man in his introspective capacity of realizing the quality of his own life processes becomes the principle within the purview of which the universe itself becomes a mere detail, and derives whatever importance may accrue to it from its relation to man. There arises therefore a new and universalized Protagoreanism. Subjective considerations become henceforth the ground elements of all thought, the ultimate logical presuppositions, and the determining aspect of the method of thought itself.

But it was overlooked that the thought process through which these results were obtained had to conform to modes and principles which deny to such results any unique claim to validity. The object discovered invalidated the method of its discovery. It is not surprising therefore that the first influence of the concept of subjectivity was to throw the order and structure of ideas into confusion and contradiction. But, in accordance with, and due, it may be, to the law of indirection developed in a subsequent chapter, this very confusion resulted practically in an age of adventure, invention, creation, speculation, which issued in a vast multiplication of the richness of experience and a vast extension of the comprehension of the powers of life. The age of confusion expressed itself in the object of utility, and established itself on the principle

of production. Some of the consequences we point out in the succeeding chapters.

II. SUBJECTIVITY AS INTEREST

It is the age of confusion, invention, etc., as becoming finally confounded in the practical processes of life, especially in the economic sphere, that now presents itself as a problem whose essential law is to be discovered, and it is upon the success of this discovery that a rational order of the practical life is to depend. The fact that our thought habits still follow the lead of the objectivity of the classical period, while our practical or active tendencies lead us in an opposite direction, makes of the whole a hopeless confusion. Our values are, as a consequence, determined by one principle, our goods by another. It is not therefore merely a matter of excessive complexity on the part of the practical world, as the meticulous rhetoric of the sociologists tries to make it out, nor is it a matter of the insufficiency of our logical methods, as is claimed and declaimed by the get-there-Eli logic of pragmatism. Hence it is neither a case for the reduction of fact to a primitive condition of simplicity, as the devotees of "exact science" insist; nor is it a case for the abandonment of any objective modes of thought which have hitherto proved useful; the fault is neither in life nor in logic, but in the failure of our thinking to find the objective conditions of full corporeity upon which life might be rendered fully and endedly logical. These conditions, I submit, are headed by the recognition that subjective phenomena are matters of content for the practical life and for the thought that organizes it; they are not matters of determining form or method, hence they furnish only suggestions but no substance of principle. How significant such a recognition may be is illustrated by saying that the world of economic fact can find no element of principle in such psychological concepts as want, need, etc., and that such concepts cannot become the centres around which facts may be grouped in significant orders. The same subjectivity vitiates the materialist presuppositions of the physiocrats. It may therefore be looked upon as the function of subjective or "personal" or "human" conceptions to keep the world of practical reality broken up and fluid as the essential medium

within which invention and adventure may extend the limits within which significant order may be effected by thought, just as an age of primitive nomadism may have prepared the ground for an ordered and settled society later. Such, at least, has been the effect of the subjective factor in the modern period; beginning with the Renaissance and thriving through Romanticism and the religious Reformation there extended over the whole face of modern culture a divisive agency which, concluding as modern industrialism, has left not one stone of substantial order upon another; and there faces us now the problem of establishing from the ground up a principle which will put order in the chaos.

What is required at present, then, for the practical aspects of life, is a dependable principle of higher objectivity, one which will enable us to think life in terms that will neither involve as principle subjective and individualist presuppositions, nor the merely formal logical objectivist conceptions of a previous age. We shall have to learn to judge of practical fact impersonally, and to base all our distinctions of value upon other considerations than e.g., the nature of, or the difference between, individual men or classes of men, or than abstract universal perfect norms.

Meanwhile logic has retained its conviction of objectivity, and in this connection suggests that the Subject is not a matter of principle but a matter of content. The subjectivist conviction that the inward quality disclosed in experience is matter or substance of principle has operated in practical philosophy primarily as an unconscious assumption. When and in so far as it has had conscious recognition, it has taken the form of a not very clearly envisaged theory of *interest*. This theory of interest is in the main only an assertion of the peculiar importance of the attitude which is characteristic of modern times, and which is vaguely designated as individualism. Its clear formulation is to be found only in the sub-categories which form the basis of modern legal, political, ethical and economic speculation. Thus interest appears as exclusiveness, privacy, and the divisive concept of the power to compel, authority, sovereignty, etc., in legal and practical thought; while in economic connections it appears in the hypothetical causal unit of production or consumption of goods and as the theoretical locus of the subjective phenomena of want, need,

desire, etc. In ethics, interest is the subjective principle which distinguishes and disperses humanity and the realm of values, as the ground of right and good, into isolated persons and their distinctive appurtenances of specific goods or properties. It is here, in theoretical ethics, where the *interested person* becomes self-contradictory, and has become the ground of the ethical antinomies such as divide the historical theories in ethics into irreconcilable camps, e.g., hedonism *vs.* rationalism.

Let us turn here then to the question of interest and try to show how it was interest that became the dominant speculative and practical attitude of modern times. First we shall see what substantial character of the older objective culture was displaced by it; next we shall note the manner in which the displacement was effected; and then we shall state in some detail the forms through which interest has passed in reaching its present state of dominance as substitute for principle. These matters can, in their objective and historic form, be briefly enumerated. In the first case, it was the more or less limited objectivity of the Greeks as modified by Christian enthusiasm, an objectivity which expressed itself primarily in an esthetic, i.e., interested, reference to nature rather than in a disinterested reference in a logical way to the whole of being, that was displaced by the subjective interest of modern times. Secondly, this displacement was effected by the more or less accidental injection into the situation of religious enthusiasm, an agency which, so far as matters of substantial order are concerned, is a purely negative and dispersive tendency. Out of this negative and subjective tendency there developed, through the accidents which brought the tendency under the influence of the rational activities of mind, in so far as such activities existed at the time, the novel phenomena of moral enthusiasm and religious fervor which, as influences affecting culture, were unknown to the Greeks and Romans. This means that morality and religion as *active* agencies are products of and indigenous to a world situation in which accident is a large and order a slight factor, and in this sense were unknown to the Classics and are a by-product of the peculiar historic and social forces which determined the nature and structure of modern civilization. It was out of this questionable attribution of casual efficacy to religion and morality that there grew up, by hypostasis, and under the limited type

of objectivity of ancient thought, the subjective concepts of soul and will as the substantial ground upon which the subjective enthusiasms might find their logical justification. We shall have only an incidental use for the reference to religion and its principle of substance, soul; but we shall find it necessary to establish a substantial ground in the higher objectivity of corporate order for will as the principle of public order presupposed by law and politics. But, as thus grounded, will has few points of contact with the subjective and psychological and "personal" will of traditional theory. Thirdly, we shall trace the development of interest through the various stages it assumed in the struggle of the classes for power, which occasioned such phenomena as revolution, "reformation," the "struggle for law," democracy, industry, all of which can be understood only as phases of the development of interest, or perhaps better, as successive stages in the degeneration of interest in its essential destructive negativity.

As was explained above, the knowledge impulse to which modern political philosophy corresponds got its final formulation in the objective practical logic of the Greeks, and the complete realization of this thought product was effected in the city-state of the Greeks and Romans during the pre-imperial periods. This means that practical politics as exemplified in the life of the city-state was the complete and final objectification of Greek political philosophy and of Roman legal thought. This superseded, no doubt, an earlier condition of unconscious balance and harmony between thought and life, and for such a condition there are no problems, certainly no problems of technique. But the collapse of classical civilization forced the problem of discord between the ideal of thought and the actual of life upon the minds of the Hellenic-Roman peoples. The result of the forced problem, under conditions that precluded consecutive thought, led simply to the combining the Greek factor of the intellectual ideal with the Roman urge to active will, the combination taking place under the Oriental medium of emotion, and the result was the moralized and emotionalized will of the medieval Christian. This moralized and emotionalized will proved satisfactory for a time, as a hope, at least, and became the instrument of what appeared to be constructive forces in dealing with conditions which the break-down of the Roman Empire

presented. But preoccupation with practical problems prevented the attitude from undergoing inner development of its own life, and as a consequence of the emphasis having been forced upon the *modes* of life, the moralized will, operating as the active intelligence, tended to excessive formalism. It was in the formalism of the medieval intellect that the objective attitude of the earlier period was lost, and for the first time the distinction was drawn between the use of the intelligence for its own sake, complete preoccupation of thought with and upon its own processes, and the activities of practical life independently of any guidance from the intelligence.

Subjectivity, as interest, was now complete. It had grown out of the interested motives of religion. With respect to thought it meant that the thought process finds its content in its own movement, without reference to or connection with the life processes in the practical world. For the life process, or the practical life itself, it meant that life finds its realization in its own activity independently of any guidance from ideas, or of any objectives which thought might lay down for it. This period, which could be dated somewhere within the XIIth or XIVth centuries, is likely to be regarded as the high point of the development of civilization by the religious and the esthetic interests, and is perhaps so regarded because of the finality of the distinction and separation between the world as realized in idea and the world as idealized in action. But however clear the distinction, Platonic Ideas consort readily with spiritualized visions of adventure in the Crusades. It was as a possible mediator between these sundered aspects of the practical world that the concept of interest came to the fore. Simultaneously with its development there occurred the division of humanity into a variety of classes; although the division in fact corresponded closely with a distinction which was found essential in idea for the development of a formal theology, the distinction, namely, of grades and stages in the series of mediators between man and God. Interest therefore came into existence with the device of the distinction of grades of persons, a formal necessity of the theology of the day. These circumstances, more or less accidental in character, have occasioned that the modern period, in the practical aspects of its development, should be best characterized

as the period of the struggle of the classes for rulership.

Here it is necessary to undertake to indicate what are the main stages or aspects of this struggle, not so much because of any interest in the struggle as such, but primarily with the purpose to develop the different phases of the phenomenon of interest. The problem of interest is of central importance because of the fact that it is the ostensible principle upon which modern practical life in all its departments is made to rest. Thus the central concept around which has developed the system of legal conceptions is unmistakably interest, and the legal process, whether in legislation or in judicial application, is concerned primarily with questions of determining the relative values of competing interests. These questions lead the law into many intricate distinctions, involving many and various types and classes of persons, and, in extreme cases, carrying the divisive instrument of distinction to the point of breaking up the personality itself into a plurality of interests, or as the lawyers prefer to call them, capacities, such, e.g., as the individual's capacity as husband, as trustee, as agent, etc. Similarly in economic theory, the fundamental motive to determine interests and assess their relative values cuts across the natural social relations of men and builds up an economic system which is at cross purposes at every point with the social life as expressed in the complex of non-economic interests. This has led in recent years to an almost uniform reference to the economic life as "chaos," a characterization of the situation which is accepted by all but the diminishing group of apologists for things as they are. But the most interesting effect of the dominance of economic theory by interest is the hypothetical "man" in which these interests inhere. The meticulous distinctions required to be made among interests, under the causal method adopted by the science, have necessarily stripped the social man of his normal practical characters and have replaced them with abstract economic capacities, and this process has gone to the point that there is nothing left of the practical man except an abstract numerical position among similar entities.

Something like the same thing is true in ethics. The individual human being is conceived as an agent whose function is completely performed in the process of claiming an interest in an hypothetical already existing good, a good provided in

the structure of nature in the same way that the moral agent is originally endowed with the "natural" capacities for accomplishing his interests. The "spring to action" in this naturalistic view is the "need" which through action finds its complement and fulfillment in the nature which is to be exploited; stated in these terms the moral life is nothing more than the process through which the individual claims and possesses his portion or share in the total bounty of nature, and the moral worth of the individual is estimated in terms of the relative size of the share which he can appropriate to himself. It is true, of course, that interests must be pruned to fit each other in the struggle, and the relative amounts of give and take thus imposed upon competing interests form the bases upon which are constructed the "rules of the game" which, as a whole, represent the weight of moral obligation, and the elementary basis of the legal structure.

The whole area of the practical life is thus at present laid out along the lines of competing or conflicting interests, and there is no need further to illustrate the fact. Interest is the principle upon which civilization in the modern period rests, and that civilization begins to show the instability of its subjective and psychological basis.

III. INTEREST, VALUE AND EXISTENCE

As has already been remarked, interest came into existence along with the division of society into classes, on the basis of the principle of dignity, and this division into classes paralleled the development of the theory of the relation of values to existence. By this is meant that the hierarchy of abstract values corresponded more or less closely with the hierarchy of persons which mediated between the "lowly" and the "most high." For example, the distinction between the vulgar and the refined, as at present understood, has no necessary relation to classes of persons, but in its origin referred to differences in dignity of persons. Something like the same is true of many other pairs of terms, noble and villien, etc. The concept of values, therefore, as an abstract representation of objects in relation to disinterested preference, is a product of quite recent theorizing, but it has its historic and social antecedents in the facts of life as these occurred during the forma-

tive period of the middle ages. The classical peoples had, perhaps, little understanding of intricate and complicated notions of grades of persons, and for that reason had no notion of "democracy" in the modern sense of the term, which seems to imply a forcible levelling of classes that are essentially antagonistic. Plato makes it clear that for him the "classes" into which he divides society are organic and functional in character, and thus co-operate in the life of the social whole, and have nothing to do with grades of dignity as has been characteristically the case in the struggles in which modern democracy has been engaged. And his portrayal of the relations of classes in the determination of the successive forms of government lacks the excess of acrimony and hatred which seem to be inevitable in modern struggles. But it is clear that the distinction of values by grades is a modern phenomenon; the Greeks apparently being satisfied with the simple moral distinction of good and bad. The significance of Greek civilization might be said to consist in the discovery of the world of *value* as a justification of the world of existence; the analysis of *values* and their classification by grades of dignity appear as theoretical counterparts of the historic social distinctions of the middle ages.

The phenomenon of interest arose, then, as a measure of the relation of existence to value. To put the matter briefly, and reducing the religious dramatization and the moral symbolism to terms of logic, as nearly as such may be possible, this theory consisted in the hierarchical arrangement of a long series of mediators or middle grounds between the two extremes of value and existence, so that pure or bare existence came to be synonymous with the complete absence of value. Thus it was thought that the ordinary facts of existence could be brought into relation with the ideals of worth and value only by a continuous series of degrees through which existence desired to participate in the nature of value, that is, by an infinite series of impulses of desire or interest through which existence is impelled toward value. This is, of course, the logical device of filling in the space between contradictories with a volume of entities sufficient to render their individual differences negligible, and thus breaking up the contradiction into an infinite series of "degrees," a device that has become useful in modern metaphysics. The medieval religious and

social development derived this suggestion from Plato; but for him his dramatic and literary account of desire or "love" and "participation" had a logical connotation, whereas the middle ages interpreted the *logical* situation created by the "plan" of salvation in *dramatic* terms, perhaps for the sake of its didactic value. The point is that for Plato the different types of ideas do not represent dignity classes, and the relations of types are cognitive and logical rather than emotional and volitional as they obviously were for the middle ages. Or, Plato's "love" is impersonal; St. Augustine's is decidedly human. But this means that the age in which the necessities of historic fact compelled the solution of the difficulty of the relation of existence and value was not peculiarly interested in logic nor the methods by which its thought proceeded; its problem was the immediate and pressing one of finding a tolerable practical attitude which could be assumed toward a world that had demonstrated a capacity for values but in which there no longer existed the opportunity or the conditions under which values could be created or produced. And as the age was one characteristically dominated by will-emotion, it attempted to solve the problem, as it did all others, by the method of dramatization. Thus it supposed between the sorry condition of human life, which represented to it mere abstract existence, and the exalted position of God who represented all values, the infinite series of degree mediators which make up the traditional hierarchy. And in order to give life and concreteness to these mediating beings, there was invented the plan of salvation as a sort of philosophy of history which would permit of the identification of the important positions within the hierarchy with the prominent characters of history. Thus not only are the metaphysical aspects of morality and its fundamental problems assimilated to those aspects of human history which represent its successes and its glories, but further intimacy with the realm of values is secured by identifying the circumstances of tribal history with the personal experiences of its great characters as portrayed in idealized biographical accounts. The Christ is, of course, the outstanding instance of this personalization or dramatization of the major types of practical exigency in life.

But what we want to get clear is that this fusion of the exalted conceptions of the Stoic philosophy with the emo-

tionalized and personalized experience-types which came from the Orient, as it was effected in Neo-Platonism and the Christian tradition, laid down for the first time in history the conditions for the development of that curious subjective phenomenon known as interest. In the classical age there appears to have been nothing of the tendency toward identifying portions or aspects of reality with the personal life in that intimate way which we now express in relations of interest and privacy; no characteristics of the common world appear to have been supposed to connect with the individual life in any peculiar way. Indeed, where there does appear what seem to be the beginnings of specialization, the relations specially indicated are connected specially with the god or the temple or with sacred objects which are in essence common, and while these objects may in some special way be the insignia of a special personal god, they attach to the god not because of his private characters, but because they are the intervening means through which the god is approached, and are thus not his interests but the public means through which men indiscriminately have access to the god. Thus ritual and the sacred objects are symbols of interest, but not of *private* interest.

There is consequently little difficulty in understanding that interest, as the expression of the subjective attitude in which the realities of life are estimated with respect to inner aspects of personality, has its roots within the peculiar conditions which obtained in the earlier centuries of the middle ages. Its full development came only with modern individualism.

It is to be remarked, however, that there are two distinct forms of the phenomenon as known in the social life of the present, and it may be well to mark out their peculiar differences. The phenomenon as it is known at present is primarily the equivalent of the group of personal attributes ordinarily designated as private, so that interest and private right or private concern ordinarily mean the same thing. This, however, is a development and modification of its original form. In its origin within the conditions described above, viz., conditions that divided social life into grades on the basis of dignity, interest was a special claim or right or prerogative of a class, and its meaning got concreteness of formulation in proportion as the phenomenon of class became clearly defined. The important aspect of this fact is that both the *idea* of class,

as distinct from that peculiar disposition of persons by *status*, which came into being as a result of an unconscious process of social precipitation, and the *idea* of interest, are new to the modern period; and that their novelty consists in the fact that their distinguishing characters are moral or "spiritual," that is to say, subjective. And we may here note that the class-idea developed first, or showed earliest distinct stages of development, for the reason that it represents a half-way place between the complete objectivity of the classical period and the subjectivity of the modern. That is, the concept of class is the mediator, in social terms, between the complete universality of objective or natural values as known to the Greeks, on the one side, and the complete particularity and subjectivity of private or personal existence on the other.¹ Thus interest came later to represent in subjective terms the position in the hierarchical scheme, together with the system of values corresponding to that position, which was the appropriate concern of a type of person distinguished by some sort of moral desert. Certain forms of recognition were thus established as "due" to these persons; and as moral accomplishment, or in subjective terms, desert, depends primarily upon access to the outer means or instruments to action, these persons came to be distinguished by their possession of property for no other reason than that property, being instruments to action and matters of concrete fact, is more readily perceived than is the performance of significant action. Thus the fact of a type of person set apart first because of the performance of approved types of action, and as thus manifesting a moral will becomes the basis of the idea of class, as depending solely upon a property basis. It is only a short step from this point to the idea of a class as fixed in the nature of things, since the possession

¹ It is in this sense that the "social" is made the presupposition of practical life by sociology; that is, it is thought of as a middle term between the *natural* existence of "primitive" man and the personal existence of the modern. But the term is quite generally given a naturalistic interpretation, that is, it is thought of as a cause or origin to which practical phenomena should be referred backward, while as a logical concept and a basis for scientific investigation, it must be given a cultural interpretation with a reference forward toward ends as realized in institutions. The latter conception, institution, as a logical and metaphysical postulate, and as thus a ground of scientific procedure, is prior to the concept of the social, is the ground upon which the social-individual antinomy is resolved. It is this subjectivist concept of the social which makes sociology, social psychology, etc., hopelessly subjective and a mere game of mental states when it is anything more than anthropology. Such *interested* procedures are negligible as sciences of ordered life.

of property soon releases its holder from the necessity of action, and the dependence of dignity upon desert is lost sight of completely. So while the phenomenon of class has a subjective origin in logical and theological considerations, it still is not subjective in the exclusive sense which comes to be attached to interest as expressed in individual relations in the modern period. The class comes to represent the universality of a value in the particularity of observable social relations, and as such is made the point of inherence of moral virtue; it is, in its way, the basis of the objectivity which lies behind moral obligation. But the necessity of maintaining the capacity for action in the instruments represented by property objects, becomes the link which finally connects inseparably the dignity of the class with the possession of property. Interest is therefore originally the peculiar appurtenance of the class, and remained patently such until class lines began to be broken through by modern individualism. But the fact of the class origin of interest is still observable in the unconscious class motivation which still dominates individual action in those instances where traditional rights and privileges are concerned. Thus a private industrial interest soon feels that the fate of religion and government is intimately concerned the moment that question is raised about private interest, and a glaring instance of individual wrongdoing is often defended by all the powers of social "control" on the supposition that the structure of society is endangered by questioning the permissibility of the wrong.

The other case of interest, and the pure instance of subjectivity, is that which expresses the relation of individual subjective *intent* to the power which is conferred by the realization of the intent in overt forms. It is purely subjective in the sense that both of its terms are simple psychological facts, since intent as realized is here anticipated in idea, and whereas the class interest originally represented the relation between property and action, both of which were open to objective judgment, individual interest represents the relation of property, considered in the large as purely abstract and subjective power, to the irresponsible and accidental mental content of the individual. Interest thus becomes the fundamental practical concept of individualism, and it was the development of the interest relation that was responsible for the excessive

emphasis that came to be placed upon the exclusive and isolated individual of modern times. It is readily perceived therefore that the various types of scientific inquiry into human relations should all be dominated by the interest viewpoint, since interest is supposed to lie at the basis of all practical relations and thus to determine the forms which these relations shall take on. Politics as a science is thus merely a scheme for representing the relative degrees of subjective freedom which pertain to the citizen and to the sovereign, and is supposed to find an equilibrium between the two subjective forces in the *peace*, itself regarded essentially as a state of mind, of the political body as a balance of the opposing interests of the two estates. Morality becomes a research for an ultimate subjective absolute in which all possible interests are realizable at once; and law the highest power, conceived subjectively as authority, which acts as umpire over the whole. And sociology smothers in the morass of social psychology, subjectivism in its thinnest and wateriest condition. But it is not necessary to go into any further elaboration of the influence of individualism and its essential subjectivism upon modern life and science; what calls for emphasis here is that within the very complex system of forces and subjective influences that goes by the name of individualism interest is the central fact, and the fact from the point of view of which all other elements in the complex get their meaning. And since interest is essentially a subjective fact, meaning rests, in the modern world, upon a peculiarly precarious and transient foundation.

IV. INTEREST AS RIGHT

I shall not take the trouble to argue that interest is the central concept of modern practical philosophy and of all the sciences that deal with human relations. It is of course true that, as discussed generally in these connections, the *term* ordinarily used is "right." And it is the fashion also to take right for granted as original and *sui generis*, and as requiring no justification or explanation or derivation from any facts of experience beyond its mere presence in consciousness. The right is justified, explained, and blessed, in the mere fact that an individual *claims* it, finds it with an accidental status within his mental processes. Indeed, such seems to be the precise

meaning of "natural right;" it appears to be taken in its mere presence in consciousness, *as interest*, as the absolute datum and presupposition of practical philosophy, whether in its legal, social or political form, and as such not capable of explanation, since it is the ground principle upon which all explanation itself must rest. And it seems to be equally taken for granted that right as "natural," i.e., as subjective interest, is also private, in the sense that every instance of it can be described as the exclusive appurtenance of some individual whose conscious states are to be taken as the absolute "subject" or substance in which it inheres. It is thus considered the basis of all human relations, and all human relations, in so far as they partake of the character of "practical," are merely matters of the compounding of the one unique original right into the structure of civilization. But the complete break between right as mental states and the objective or institutional structure of civilization is overlooked, and as a consequence contradiction runs from this point all the way through our social theory and our practical philosophy. The "social problem" then becomes one which demands *how* we are to *make* an objective and real order *out of* the states of mind of individuals, and this is to propose an irrational situation. But it nevertheless is the fallacy of the age, the assumption that realities can be created by a change of mind. Practically, at present, it is the highly amusing but futile problem of "social control" which the sociologists appear to conceive as the task of "finding," by some lucky stroke of rhetoric, bits of mental stuff, e.g., sympathy, sociability, sense of justice, religion, personality, etc., which can be omeletted into laws—suggestion, gregariousness, like-mindedness—laws that are of course causes and so inexorable, so that the "problem" is happily solved by ignoring it.

The concept of right therefore, even in the extreme aspect as private and exclusive, becomes in contemporary social theory the ground of explanation of the constitutions which impose order upon these institutional structures. Private right thus becomes also the basis of enacted will, and thus the ground of law, since the constitutions of all public institutional structures rest upon the fiat of the individual as compounded in the group. But it is obvious that this privacy and exclusiveness and uniqueness, in terms of which subjective

right as interest is described, become simply the ground of subjectivity in that their only increment of meaning lies in their demonstrative or designative reference to the individual as existing by and in himself. Right, therefore, as the basic concept of practical philosophy, is, in the prevailing view, merely the attempt at objectification of the subjective phenomena of interest, as appears from the artificiality and unreality which begin to assert themselves as the most prominent characters of those institutions that have been founded on a basis of right. Such institutions have become the subjective private property of the strongest will, the realized object of the loudest claim. I mean that the fact that our political, economic, social and religious institutions generally, are recognized as being in many respects at cross purposes with the currents in which life purposes now tend to flow, the fact that they tend persistently to fall apart under the demands of legitimate utility and require to be continuously buttressed up with force and deception and protected and supported by all the ingenuity of man—all these facts mean, I say, simply that the structures of life rest upon the insecure and shifting sands of subjectivity. The modern state is the interest state; not in the sense that it undertakes to combine and harmonize the interests of individuals into a public purpose, but in the sense that it is a vast external store of values or goods from which the individual is to derive his peculiar share. The basis of the citizen's loyalty is, therefore, what he can "get" out of his "government," and graft becomes the order of the day, an inevitable consequence of accepting interest as the basis of order. The state is the objective complement of the individual's private will, and the realization of his subjective interest or desire, i.e., the performance of his public duty, consists in the appropriation to himself of that aspect of its reality which uniquely relates to his interest or desire. The church is the interest church; and quite appropriately business, or abstract private right, has taken it over. Religion is an ultimate advantage; its reality is to be shared, i.e., divided and distributed to individuals. It is the same with all institutions founded upon the concept of right; they dissolve into the unreality of subjective interest. Modern civilization, in fact, built its house upon interest; for a time it prospered, as long, that is, as interest met with appropriate

opportunity in the exploitation of nature. But the winds blow and the rains fall.

The necessary conclusion is then that *interest is incompetent as principle*. The doctrine that the state is a harmony of conflicting interests, that law is the instrument of effecting and maintaining the harmony, that the purpose of morality is to find and define the characters of interest that make a harmony possible, that religion should look upon conflicting interest and call it good; all this neglects the simple fact that *no organization of subjective phenomena is possible*, that subjective facts do not submit to order, that the order of mind is not the superficial juxtaposition of mental states.

Then such order as is secured in the modern type of state comes from sources other than those indicated by the theory upon which the state is supposed to be founded. And the extraordinary difficulty that is found in trying to make the functions of the state run smoothly to the production of political ends is due to the fact that the instruments of the state are not adapted to produce those ends. No political ends, for example, can be attained by representative government. Theoretically, on the interest "principle," the state exists to guarantee the freedom of the individual against invasion from without and confusion within; but periodically with a rhythm that seems to indicate the operation of necessary laws, wars break out *among* states with the result that the *internal* harmony of the state cannot be preserved. Yet we will not learn the lesson that Hobbes so forcibly demonstrated, that when the *interest* state fails to maintain the peace, it *as state* is ipso facto out of existence, and the resulting confusion indicates that a new state must be constituted. In the face of the obvious fact that in time of war, and for long after until the constitution is "amended," the ordinary constitutional guarantees do not hold, men argue that wars are fought to maintain the sanctity of constitutions. And in the same spirit all laws of God and man are broken by the state in the effort to maintain the law. All of which means that as a result of the founding of the modern state upon the concept of interest, the entire practical structure of life is thrown into contradiction, and so far as the maintenance of the state in the respect of its citizens is concerned there remains not one stone of it upon another. For, unconsciously men feel that so far as the state

undertakes to guarantee interests, it will be *the stronger interest that determines the form and function of the state*; that the only possible approach to harmony of interests lies in the complete subordination of lesser interests to the greater. It does not imply that a consort of lesser interests may be effected into a "majority" interest, in the sense that it is the greater number of interests combined; the "majority" interest, so far as the effective will is concerned, is in the nature of the case a representation of a minority of persons. The interest that gets itself effected is therefore inevitably the private interest, regardless of the number of individuals concerned, the interest that has behind it the greatest weight of property, since it is in property alone that will effects itself in freedom.

It is not necessary to multiply facts or arguments here. But it may be indicated that in the fallacy of the interest state may be found the root of the legal and legislative difficulties that seem to beset modern governments. First among these difficulties are those which are inherent in the representative system. With representation based upon numerical or geographical distribution, to say nothing of the logical contradiction involved in *one mind representing another mind*, the implication is clear that behind the system there is the idea of interests essentially in conflict, each representing a share in the whole good the attainment of which precludes the like possibility for some other interest. And the majority-minority division of legislative power implies that the majority will attain its ends at the expense of the minority, and that the minority will keep the peace in the hope that it can manipulate itself into the position of the majority where it can recoup its losses. Thus a spoils system, a system of trading and matching of power or cunning is inherent in representative democracy, and in so far as a spoils system has anywhere been overcome it has been accomplished by the substitution of other motives for interest, and usually by methods of deception. The transition that is going on in legal theory from an emphasis on agency and contract to a clarification of concepts like that of trust and foundation shows a tendency to abandon the interest point of view. That the transition is being effected mainly through fictions as instruments, and not recognizing the real substantial element of legal growth inherent in fiction, is an instance of what I mean by deception. There

is then little possibility of honor or honesty in the prevailing types of "democracy," and no essential modification of the elementary injustice could be effected were the offices of government filled with saints. For, the more honorable the statesman the more readily is he deceived, and the cleaner and more disinterested the governmental authority the easier it is displaced by interest. It is a fact patent to everyone that at the present moment there exists behind every throne of governmental authority an interest bodied in property which ignores the personal and cultural and spiritual purposes upon which government is supposed to rest. It turns out therefore that in the effort to construct a state in which every person is to have an interest, the interest which gains expression is one whose impersonality is the basis of its power, and just by virtue of its impersonality lives outside the ambit of the law which it itself creates. The impersonal interest-mass is therefore outside and above the law of the land at the same time that it dictates the terms of the law by which personal interests themselves are controlled. There is no possible order of interests.

A still more striking instance of the irrationality of interest is to be seen in the economic and industrial sphere. Here the process of impersonalization and mass-accretion are still more obvious; perhaps because it is interest that is avowedly the content of the economic "order." Here the interests of persons are in every direction superseded by the interests of organization. The individual interest is swamped in every case by an overpowering impersonal system, and the system itself lives by continuous accretion to its blind mass of such personal interests as may lie in its way. And the accretion of mass and weight soon reaches a state where it is beyond the comprehension or control of any intelligence; nobody can be found upon whom rests the "responsibility" for the "acts" of a large corporation. Its acts are results, in the technical sense, of the sheer momentum of its mass or weight, and no matter to what extent they may conflict with the requirements of morality, the moral sense is helpless in its presence. It is stupid therefore to attempt to punish or control such monsters by the ordinary methods recognized by law and legislation; the monster is itself the source and instrument of legislation and the arbiter of law. There have been found and there

can be found no methods whereby the hold of vast impersonal interest-masses upon the life of society can be broken or mitigated, so long as the principle of the state as the order of society is formulated in terms of interest, or in terms of any other subjective fact; so long as the basis of its order lies in subjectivity, so long will society be subject to forces over which it can exert no control, and its destiny will lie in the lap of gods that are blind. Interests, subjective states, are not the substance of order.

V. INTEREST AND PURPOSE

But it is not interest as a specific fact that must be rejected as the basis of principle of order in human affairs. It is the type of fact to which interest belongs that is objectionable; our critical principle states that *subjectivity* is not the ground of order. The weakness of interest, when conceived as principle, does not lie in any of its specific characters, in anything, that is, that distinguishes it as interest. So long as order is conceived as a possible consequent of *any* subjective fact, interest is perhaps as competent as any other. And this is shown by an examination of the subjective fact which is most frequently substituted for interest when the weakness of the latter as principle is perceived.

We may take here certain ancient traditional convictions as instances of the general truth that we desire to put forth. These we select because they have persisted throughout the centuries as opponents of interest, but still making the mistake of assuming that some other subjective principle could be substituted in the place of interest. It is one of the earliest and most profound of the convictions of the Christian scheme that "selfishness" was the source and seat of the disorder and chaos which makes of the "world" a fit associate of the flesh and the devil and a thing to be overcome or avoided. And selfishness seems to have been pretty well understood, in its psychological characters, as that internal tendency to relate the individuality in a unique and peculiar way to specified aspects of the good. Its exclusive and isolating influence was thus seen to be subversive of any influence that relates to the good in a large and sharable way, and its divisive and dispersive force within the "body" of the social life was clearly per-

ceived. Many textual statements of the principle of subjectivity could be found which, when divested of their dramatic *personae*, might be used and have frequently been used in constructive political thought. But the realization of the inadequacy of self-interest fell upon stony ground in the emotionalism and voluntarism of the time, and much of the experience energy of the age was expended, in true pragmatic fashion, in devising means whereby a world disordered by interest might be evaded or avoided.

There were, however, effective efforts put forth, and the direction which they adopted speaks well for the intellectual acumen of the time. Substitute for these exclusive self-interests, so runs the law when stripped of its hortatory embellishments, large and all-embracing visions of a good in which there shall be guaranteed to us sufficient for our personal requirements, and which shall make no demands upon our effort or our attention. Or, as is said in later theorizing, pool all your interests in one all-embracing *purpose*, and let this purpose represent the relation of your inner nature to the real. That is to say, the concept of purpose is propounded as the bearer of our relations to the good and as so transcending the immediacy of interest that interest will cease to intrude, and the "body" of persons will be maintained in its integrity by the sheer prevalence of common feeling.

But purpose is still subjective. Its maintenance as a principle of action depends, as was well understood, upon its being continuously re-enforced by "assurance" and "faith," in other words, purpose itself, being essentially subjective, contains no element of self-sustenance, and requires to be supported by external means to insure its constructive effectiveness. Hence the recurrent lapses from the faith and the necessity for endless exhortation to maintain the common purpose. The Christian concept of purpose is effective, therefore, as showing up the inadequacy of interest, but in support of its own claim it could give no arguments that differed in essence from those which could be given in support of interest. It is therefore of the same subjective stuff as interest, over which, as matter of principle, it possesses no advantage.

If it be objected that the concept of purpose, as a philosophical principle of objectivity, stands in a different status from that which has been the theme of religion, I reply that

it also resorts, as it must, to persuasive methods in order to get itself recognized, and that in order to maintain a hold in the public life requires the continuous effort of "education" or some other subjective process, just as the Christian ideal depended upon the infinite process of preaching. What requires eternal vigilance to sustain it hardly convinces of its objectivity. Purpose thus appears to be vitiated by subjectivity just as does interest; the characteristic difference being that while interest is subjective in its origin and intent, purpose is subjective in that it contemplates an end that is composed of mental states.

A similar result would be reached by an analysis of the doctrine of disinterestedness in morality. Such a doctrine gives itself dead away in its favorite phrase "disinterested interest." This shows that what such an argument has in mind is merely a super-interest, one that is so transcendent of ordinary interests that its nature as interest will somehow be overlooked. It is still a form of acceptance of the subjective viewpoint, and is exposed to all the criticisms of that view. What the subjective view lacks is some way of escape from the contradictoriness of self-reference. Its error is the confusing of the immediacy of some psychological phenomenon with the objective mediacy of the impersonal world. This immediacy as private and concrete cannot be overcome by sinking it in the limbo of superpersonal abstractness or of immediacy in general. This is the common fallacy of all religions. Nor can it be overcome by the forcible aggregation of all instances of it in one large purpose, as is attempted by philosophical motives which have become aware of the weakness of interest. It is not overcome by ignoring the essential facts of the contradiction as in the idealistic doctrine of degrees or the Christian conception of a hierarchy of powers, nor by poohpoohing the logical efforts of those who consent to try to think about it, as represented in the attitude of utilitarians and pragmatists. The utilitarian and pragmatist acceptance of psychological phenomena as data of science commits them to the same logical presuppositions as are accepted by a visionary idealism. Both fail to see that psychological phenomena exhaust themselves in the immediacy of self-reference, that their only possible significance lies in that they furnish the abstract outlines of experience-content in the

form of self-consciousness. Self-consciousness thus becomes the hypothesis of a raw content stuff for any and all instances of reality, and like Kantian time, is an infinite given whole, which means that in questions involving principles of the real it has no part whatever. So the best that can be made of descriptive psychology is to give it a place as antechamber to science or logic; when matters of principle are involved it has nothing whatever to say. There are no psychological principles.

What is required, then, is that a new objectivity, one that shall be universal and thus shall take the place of the concrete and immediate objectivity of the Greeks and the Christian tradition, that is, an objectivity made immediate in hypothesis, assumption, and shall at the same time overcome the subjectivity and abstract internality of modern thought. It thus appears, when the demand is formulated in this way, that no subjective fact, whether interest, purpose, or what not, in any glorified form that may be given it, is sufficient as principle of the order that the continuity of life in the world demands. When we turn to any of the practical disciplines, politics, ethics, sociology, law, for hints as to the nature of the order that is implied in the continuity of corporate or embodied life in this world, we go away sorrowing; we ask for the bread of life and are given the offal of the process of living; we are referred to our mental states, the place where we know the order is not, so long, at least, as we are effectively conscious.

A period of profound and exclusive preoccupation with the realm of the subjective, with a rigid reflective analysis of the process of consciousness, was, no doubt, a necessary phase of the development of human experience, necessary in that it was implicit in the history of the preceding ages. It was also necessary in that it was the condition of overcoming the earth *in its detail* in the invention and exploration and adventure which have thrown the wealth of the material universe at the feet of mankind. But it does not yet appear whether it is to be a case of casting pearls before swine. Unless it can be realized that some more substantial principle of order must be found for that universe than subjectivity in any of its forms, there is grave doubt as to whether the subjective or cultural motive itself can be maintained against its own internal tendency to dissolution. But it is also necessary, even in the

interest of an adequate understanding of the subjective motive, to effect a synthesis of that motive with preceding historical motives if a total view of experience is to be attained. And such a total view is an absolute necessity if we are ever to reach that grasp of the many strands of value, the many elements of culture, the synthesis of which forms the basis of the social life. Each of these elements embodies many problems peculiar to itself; and the sciences which trace them in their various ramifications backward to their elemental sources in nature and human nature are making essential contributions to that synthesis. But here the rule is not divide and conquer. There will perhaps never be an end of the process of analysis and description of fact. The final conquest of the realm of meanings in life demands a synoptic view of the fundamental cultural interests which envisages them in their aspects as universals. It will have to look above and beyond the facts and processes exhibited by the analytic interest, will be obliged in a certain sense to ignore such facts and processes, since they are self-referent and subjective, after recognizing them in the assumptive mass of experience upon which thought always stands, and literally see out beyond them to their meaning in law or principle. This will call for a comprehensiveness of knowledge and a keenness of interpretative power which nobody will claim to possess; but the utter incomprehensibility of the whole of knowledge does not relieve us of the obligation of attempting a view of the wholeness which life manifestly is.

The problem of order in human affairs is, then, essentially a speculative problem, one which calls for the long view, and the capacity to perceive what does and what does not matter. The partial views represented in the practical disciplines must, as subjective, be synthesized in a practical philosophy whose method is speculation.

VI. TYPES OF THEORY OF ORDER

The problem as it presents itself at present is one in which the speculative aspects of order are to be traced in their capacities as principles. Stripped to their barest essentials, and overlooking details, speculative theories of the nature of order in human affairs and relations are limited to two main

types. Each of these, however, shows so many gradations of degree as to result in a confusing multiplicity of sub-types. But classification of these types of order, if our reflections above are to be followed, would be altogether unprofitable, since the classificatory motive rests upon subjectivity, and it would appear more useful to attempt to describe the attributes of order as such in the hope that the element of principle implied in order might be disclosed. Perhaps it should be explained here that the presentation of a theory of the state is not attempted in this essay. But a fairly definite and consistent conception of the state as the system of public order is implied throughout the work, and I have assumed that its outlines will be visible to anyone who reads with such care as is necessary to the understanding of the topics discussed. If I should undertake to indicate briefly the main features of the state herein implied, I should say that it rests, negatively, upon the principle that the political relation is a speculative device of logic, has no content of its own, and depends for its substance primarily upon economic and religious experience-content. Political thought then always has reference to economic and religious reality, just as do ethics and law, for the most part, and this is what distinguishes political relations as practical relations, that is, as having content in human action; but it places politics first as a normative science and only secondarily as referring to a mode of public life. Politics is then essentially speculation upon the *order* of economic and religious fact, which, in its practical aspects, becomes experimentation with the relations among economic and religious bodies. It results naturally from this that political action and the course of legislation, the main function of political life, should be determined by continuous interpretation of the public meaning of these economic and religious institutions, for these institutions live a life of their own which political speculation can only follow and interpret. In general, I should accept the conception of the state that begins to emerge from recent theorizing, particularly of certain British authors, although I should not know, in detail, what it involves, since it so emphatically accepts the experimental method for practical politics.

Of the two types of theory there is, on the one hand, the point of view which looks upon human relations as individually and severally deriving their meaning from some sort of whole

of life. This attitude varies with different types of mind on the question as to the nature of the contacts and the institutional mediation between specific human relations and the whole. The question becomes, in the one case, a matter of finding explanations as to how the whole comprises the multiplicity of social phenomena in its integrity, and how that integrity is maintained in its permanence. The point of view is primarily that of the empirical philosopher in social theory, who is, in his way, quite as hidebound an absolutist as the most formal of rationalists, and is, moreover, the rationalist's peer in dogmatism. This question, how the whole contrives to comprise the parts within its nature, becomes, in the last resort, unintelligible, which is the refutation of the empirical philosophy in social theory. On the other hand, the absolutist proper, that is, the philosopher who consciously accepts the implications of the postulate of the whole, interprets the relations between the ordinary social phenomena and the whole as themselves of the same nature with those which constitute the whole. But this interpretation often shows traces of the circular argument, or, what is worse, becomes lost in the limbo of abstract identity. However, this point of view has an advantage in that it gives, along with its factual implications, a whole in its aspect of ideal end, which permits the concept of the whole to serve as the principle and ground of facts considered as values, as well as the law for facts in their descriptive and classificatory relations. It is the failure of the empirical philosophy to find an objective ground of values that is responsible for its breakdown as social theory.

Contrasted with the absolutist, the pluralist conceives the mass of human relationships as embraced within a loose-fitting combination, the parts of which are themselves not restricted by distinctness of form. These more or less loosely ordered parts are considered as self-sufficient and "independent" of each other, the theory, on the whole, tending to neglect or deliberately to ignore the relations among parts as of no great consequence. This is the federalist idea, the idea that the immediacy of human relations constitutes their essence, and that such relations, when extended beyond a given degree of complexity, become negligible. In its extreme form this point of view approaches absolutism in that it tends to regard the relations within the local center as becoming stronger and

closer as its external relations tend to become lax and finally to disappear, an ideal of human order perhaps most commonly identified with communism. The peculiar weakness of this type of thought is the tendency to neglect the fact that the "independence" of local units is not complete until unity of principle is established between the local unit and the totality of local units, a weakness which the pluralist recognises and tries to overcome through some sort of principle of co-ordination. But it remains a question as to whether this new pluralist view is not merely a reassertion of the more or less defunct formula of 'local autonomy' or 'local self-government' stated in collectivist terms.

In all types of theory of human order, therefore, the central problem has reference to *the extent and degree of unity* which is implied in the *right* considered as *order*. As a theoretical or speculative problem of politics this formulates itself as a research for the principle that will recognize and establish unity and order in a harmony with discreteness and conflict as the complementary aspects of the real. It is therefore a logical problem, and its practical aspects become a research for the metaphysical status of unity and order considered as constituting the real as ultimate object. At this point the ultimate object, the "state," in its aspect as unity, becomes the descriptive problem of Fact, and in its aspect as order, the normative problem of Law. Social theory, therefore, is scientific jurisprudence, juristic science, or science as law. The problem in its practical aspects is one of determining experimentally through the application of science as law, the degree of unity appropriate to any instance of the real considered as fact. On this point the theory has again comonly divided on the lines which distinguish the absolutist from the pluralist. The absolutist, emphasizing unity, advocates closeness of organization and large-scale centralization, justifying his attitude by attempting to establish continuity of principle between the local unit and the social whole through the logical device of denying the "externality of relations," which phrase, in its normative implications, involves a criticism of "positive" law. His motive seems to be to effectuate order as a whole and in the large, and the tendency is to neglect the matter of the status appropriate to the individual considered as part. The position of the individual in the system, as thus in local and specific

terms undefined, tends to leave the whole with no claim upon the individual's action or respect which can be rationally grounded, hence his freedom, as abstract, negative, political freedom from restraint, is also undefined, and perhaps undefinable. Hence the degree of unity sought by the absolutist seems to take no sufficient account of the 'natural' right of the individual to free expression, and the practical problem becomes stated as, How is *unity* to be made consistent with *freedom*?

The pluralist, again, with the individual's freedom broadly defined in terms of the closeness of organization in the local whole, has difficulty in convincing the individual of his obligation as having a natural and objective expression in the ties which bind the local unit to the ordered whole. Such ties seem external and remote, and, on pluralistic grounds, are not easily shown to be continuous with the more immediate purposes of the individual. As a consequence, political relations are thin and tenuous, and with the large degree of concrete freedom thus defined in terms of volume of opportunities to actions which issue in immediate satisfactions, and in terms of situations which are immediate, private, and local, the individual is not easily interested in his larger public obligation. Consequently, the practical problem, from the pluralist point of view is, How is *freedom* to be made consistent with *order*?

Human order, then, as a speculative problem, turns out to be a problem as to the logical aspects of unity, and, as a practical problem, one of the constitution of order in fact, or, what is the same thing, one of the nature and functions of the institutions of life. Order is, in its political aspects, largely an experimental matter of the executive and administrative processes and machinery through which public purposes obtain their objective ending. As political ideas have developed in modern times, there has grown up the conviction, among adherents of "absolutism," that the appropriate objectification of public purposes requires the invention and perfection of specialized political machinery as the instruments of government, and in response to this conviction there have been created the vast administrative mechanisms of modern states. But the acceptance of machinery that has a peculiarly political function seems to overlook the principle that political relations have no peculiar content, no content of their own, but

are the abstract forms or order-types for economic, religious, etc., relations, which have a peculiar experience content. Advocates of the pluralistic idea, a class which, by the way, could not in the nature of the case become politically coherent, have tended to look to existing industrial, religious, moral and social institutions, considered as objective embodiments of immediate experience content, as adequate instruments through which public purposes can be best expressed, and have been, on the whole, suspicious of the tendency toward the development of specialized machinery in the form of governmental agencies.

As a consequence, modern social organization displays two quite distinct and parallel tendencies; the one toward the development of government in the abstract, toward the multiplication of administrative agencies, which, without regard to the specific requirements of experience content, and, as authoritative bodies organized outside the main processes of the practical life, seem directed in their course of action primarily by abstractly formulated legal doctrines. The favorite formula of this point of view is "the rule of law." Such an arrangement leaves government somewhat remote from the life- and thought-movements of peoples; yet the characterization seems to apply to existing governments without exception. The other tendency is to regard extra-governmental industrial, religious, 'social,' etc., agencies as competent instruments for the performance of public functions, and to regard the sphere of government as restricted to maintaining a degree of facility and harmony among such 'private' agencies. Its formula is "the less government the better." This point of view identifies public purposes with private purposes, hence contends that the agencies and instruments through which private ends are accomplished should at the same time be the media through which public purposes express their superior authority. This is peculiarly true of 'business' and the motives which get expression through complicated commercial organizations. From a speculative point of view this doctrine finds its peculiar nemesis in the fact that *interest* is never completely transformed into *purpose*, that is, not susceptible of order, as is implied by the theory; from the practical point of view, the difficulty lies in the fact that instruments of private interest

are negative and dispersive in their social effects, so that actual *unity* is never attained.

As a consequence of this situation, and more or less in contravention of both types of theory, public order, so far as it is represented by government, runs its own course more or less independently both of life processes and of forms of theorizing, and tends to develop ends of its own outside the sphere of personal or social experience, under the influence of the idea of government for its own sake. Also, since government claims to be the peculiar guardian of *public* purposes, other functions tend to identify themselves with distinctly *personal* purposes, which, by contrast with abstract *governmental* functions, take on the equally abstract character of *private* purposes. Such functions as the dissemination of information, distribution of food, transportation generally, etc., which are by nature public concerns, strictly purposes of the whole, become organized as private interests; the result being that antagonisms develop between privately organized interests on the one hand and personal and public purposes on the other, with government standing outside as a more or less helpless and uninterested spectator. This tendency of organized life to follow "blind" instinct and to create purposes of its own of course leaves the actual social order without rational principle, and thus are set the conditions of the problem of "control."

But while blind instinctive tendency leaves the actual or public body unprincipled, it nevertheless puts the problem of the control of the practical or experimental processes of life by the reflective or speculative intelligence before us as itself a speculative issue: Through what means, both experimental and speculative, can unity and order, as matters of principle or law, and as *personal* functions of the whole, be made consistent with the rational distribution of functions as specific techniques of individual life throughout the component parts of the social body? On this question, as it seems to me, neither type of theory has been able to speak with any satisfactory degree of conclusiveness. The absolutist, whether ancient or modern, theorist or "practical man," assumes that order is to be *superimposed* upon individuals through law conceived as the instrument of authority; or that functions are to be

assigned to individuals through the well-intentioned feeling of a benevolent despot. In the one case, sovereignty is conceived as absolute will supported by the military, and in the other, as privilege supported by hierarchical organization of classes. In the one case law is conceived as authority and the 'power to compel' as justified by a rationalized system of justice and administration; in the other, law is benevolent or emotionalized will operating through a system of administration of a fundamentally personal sort designed to 'care' for the ultimate social units. In any case, the absolutist presupposes a close-knit system organized from above downward, an organization that rests essentially upon the assumption that individualities differ in *kind*, and that the differences in kind should be maintained as class distinctions by privilege guaranteed to the 'higher' class or classes. This is the explanation of the existence and the dominance of the priesthood, the nobility, and their modern descendant, the "Christian business man."

On the other hand, the means to order and unity as they occur to the mind of the pluralist, imply order and unity as composite results of the more or less accidental confluence of the myriad of separate purposes or functions of individuals. This is probably largely a restatement of the old dogma of local self government. There is a tendency to apotheosis of 'association' among the pluralists, as there is a tendency to hypostasis of abstract law by the absolutist. With the latter, differences tend to disappear in abstract homogeneous identity, just as with the former differences tend to become ultimate and thus to imply utter dispersion. The pluralist means to social order may therefore be a *doctrinal* abstraction, as is instanced by the modern conception of political democracy, in which case order in human affairs is left pretty much to take care of itself while the satisfaction of purposes is conceived to be accomplished subjectively in *states of mind*, such as are represented by 'rights,' 'freedom,' etc. Or the pluralist means to order may be conceived as an organization of concrete resources of individual functions into a social system dominated by economic considerations, such as the ideal of the 'industrial democracy.' But while means in this point of view are not as yet clearly defined, the attitude is the basis of some hopefulness in its willingness to resort to experimentation and to abandon implicit faith in abstract historical dogma.

VII. ORDER AND THE PROBLEM OF CONTROL

But the situation, as characterized throughout by uncertainty, serves very well to emphasize the importance of the function of control in human affairs. This, as it seems to me, involves on the one hand the general problem of the nature of will, and on the other the problem of the constitution of the generalized instrument through which will as public function is appropriately realized in satisfying ends. In the approach to these problems I have assumed that, since we are here face to face with the ultimate of practice, the nature and constitution of will would be made intelligible if once we could hit upon the key to the concrete order of functions through which will is expressed or embodied. It is to this end that I have had in mind all along the practical, i.e., political, ethical, juridical, etc., motives and processes, assuming that the *law* of practical life might at some point manifest itself as *fact*, and thus submit to investigation and formulation. The fact that has appeared to me to be fundamental and typical as suggestive of principle is that which in recent discussion has been designated association. But this term seems to be used very loosely, and I have experienced some difficulty in finding it characterized with sufficient definiteness to support its claim as an embodiment of will and as a basis for principle. Its most discouraging weakness seems to be that, as commonly used, its connotation is subjective, and it does not succeed in embracing within the unity which it implies the objectivity which is fundamental to the idea of law. To overcome this difficulty I have examined, under the limitations of a layman in this field, the idea first in connection with scientific fact within the field of biology, and this appeared to furnish ground upon which critically to review and assess the idea as contained in the 'organic' theory. I have tried to show in this connection that the concept of association has merely succeeded in vitiating the theory of the organism with subjectivism, whether the organism in question be the natural or the social, a result which seems to be substantiated by recent biological research. The idea of association is next considered as objectified in the fact of *corporate* organization, typically such organization as is found embodied in industrial relations, and while the crudeness and malappropriateness of the industrial organization is

recognized, it yet seems the best means with which to illustrate the essentially objective aspects of social organization. But the industrial corporation falls far short of the degree of appropriateness to ends that considerations of principle require, and this element of principle I have tried to supply through an examination of the legal conception of contract. This concept, stated in objective terms as the tendency to corporate order inherent in human life, and illustrated through the facts of will, avoiding, however, all implications of subjectivity and privacy, seems to supply the required elements of principle.

But after will is seen as embodied in corporate order in the form of social 'contract,' the underlying difficulty comes to a head in the endeavor, which cannot be shirked, to formulate the phenomena of will considered in their aspect *as law*. The prevailing theory on this point regards will as the absolute fiat of constituted authority which promulgates law out of its metaphysical essence. This positivist attitude seems to dominate all theories of law, even those which find the origin of law in the autonomy of ordered life; even in this case the assumption of autonomy seems to mean no more than that such maxims of law as are found recognized should be recognized as ultimate *data*. While such perhaps even now represents the prevailing attitude with respect to law, it is of little consequence for theory until interpreted in other terms than those expressing mere custom and respect for authority. Law, interpreted in any terms of respect or authority, is purely subjective, hence without theoretical validity or practical cogency. Another theory of the relation of will to law attempts to secure objectivity for the idea of will in the concept of *end*, the end being a forced objectification of the subjective will in the form of the rational Idea. As Plato stated it, the rationalized will was criticized as lacking contact with fact, and, as the criticism was developed by Aristotle, became the ground of a third conception of will as law in the Stoic doctrine of 'natural law.' Through the introduction of the idea of *human* nature into this conception of natural law, it also developed subjectivity in the modern presupposition that law and will rest upon the psychological concepts of "need," "want," etc., with their corresponding physical but equally subjective coun-

terparts in property and property-guaranteed contract. In the attempt to objectify itself will succeeded in merely materializing itself. But the attainment by the property-contract idea of an independent status in the social structure and full recognition by legal doctrine seems to give the necessary basis for an objective theory of law and will in some such idea as that which I have tried to develop under the designation of corporate or embodied order. But it is to be frankly acknowledged that this involves revolutionary changes in the meaning of property and contract.

From the critical point of view there are two or three widely prevalent fallacies which I have done what I could to overcome. One of these, perhaps the most vicious, is the tacit inference in most discussions of social theory that since the 'science' of society must rest upon human nature as its basis in fact, therefore experiences, either as isolated units or as amalgamated into 'communities' or collectivities, become the data of social philosophy or social science. The political and economic aspects of social theory build vast air castles on "needs," "wants," "values," "interests," etc., and appear to be quite blind to the fact that the slightest analytic puncture of the edifice by a competent logic of human nature will explode it in subjective vapor. As against this sort of thing, a 'materialistic interpretation of history' is much preferable. Politics, as the science of *human* nature, is the rational ordering of the objective institutions of human life, and not a fanciful fitting together of subjective states of "need," "want," etc. Sociology is an offender in the same way, only it seems to have a passion for instincts rather than for the needs of political and economic theory, not, as it would appear, because it conceives of instincts as capable of organization or rationalization, but presumably for the converse reason. In devoting a chapter to sociological theory I have perhaps taken more pains than the subject warrants in order to point out what appears to me the utter irrationality of the scheme which most sociologists take so seriously. And, while the science is yet 'new,' it is old enough to demonstrate that as yet its old men are seeing visions and its young men dreaming dreams. There is no possibility of a "science" of *human relations* so long as we are merely concerned with descriptions and classifications of mental states, whether these states be instincts or any other;

or with imaginary subjective cements designed to make men stick together in groups.

A slightly more promising development appears in what has come to be called sociological jurisprudence. This, I take it, represents the conviction that law, which has justly been criticized as remote from life, should be made to rest at every point upon the facts of social relations. But in adopting this standpoint jurisprudence should reflect that sociology has no unequivocal conviction as to the nature or principle of social relations, nor any principle adequate to meet the demands of a science of law, and is, for the most part, still looking for the magical key to social reality in the form of a peculiar instinct or some mystical system of instincts. Sociology, in its normative or legal bearing, is still enamored of the old dogma of salvation by a change of mind. The 'new' jurisprudence has, or might have, a much firmer basis in the insights which have come recently from the analysis of moral experience in its social aspects, and from attempts to make moral experience completely objective; and it is this result in ethical thought which has perhaps been responsible for whatever of consequence has been achieved under the name of sociology. But even on the ground of ethics the great difficulty is to avoid a crude naturalism, since the immediacy of naturalism allows it no direct contacts with law. Such references to law as occur in this work are not to be taken as claims to competency in this subject, but as efforts to find some ground of a more intimate connection between law, considered as a mere regulative and distributive principle of justice, and the concrete relations of practical life. But when the ground is found it will merely mean that law, when *naturally* related to experience, *is* ethical principle, in that here for the first time it has attained universality and fulness of content in the right.

Most unfortunate aspects of the general fallacy of subjectivism appear also when the law is looked upon as a mere 'practical' and regulative principle for the disposal of specific cases in litigation. As the reformatory principle of justice, the law seems to assume that order in the social body can be secured by bringing about effects in the mental states of individuals. This is doubtless the basis of the effort on the part of the law to make contacts with sociology. This fallacy is universal and affects all social philosophy, whether political,

legal, ethical, or what not, and the possibility that it may at an early date be overcome seems remote. It has become firmly stamped in the modern consciousness as a mere reflex result of the accident which is commonly referred to as the 'course' of civilization; and, in spite of the objective vision and the rationality of the medieval church, has practically eliminated all traces of the original system of ideas which the church represented. The church's idea of the social wholeness of life was destroyed by the doctrinal superstition of the metaphysical independence of the individual soul, and this doctrine became militant in the period of the reformation as the assumption that 'salvation' is a psychological change effected in the 'soul' by some hocus pocus of magic. The error persists in every department of modern life and thought; in its legal form it has become the basis of penal theory, and whatever be our prevailing notion of the nature of correction, revenge, reformation, example, or what not, they all agree in method, that something should be 'done' to the individual soul or character. It appears in politics as the superstitious reverence for the 'vote,' the idea being that by the magic of the vote each of us by separately contributing his unique psychological genius or his emotional 'derndest' may perform and fulfil his whole obligation. In every aspect of human activity or thought the assumption is that in order to accomplish real ends you must *do something to* individuals, and the preference is that you should operate by some form of magic upon their mental states. It seems impossible to attain the objective view in matters of human affairs where the consequences of failure are most grave.

In this work I have attempted to reach whatever degree of objectivity I might be able to find, and I have undertaken to discuss human affairs in what seem to me their fundamental aspects with as little mention as possible of specifically *mental* facts. It has seemed to me that the realities of life are not mere 'ideas,' not mere abstract states of mind whose very existence is often questionable, but complex outward organizations of fact which include 'hard,' 'brute' facts along with the more intimate mental phenomena, and in which the distinction between the two types of fact is not, in many important cases, capable of being drawn with precision. By the term objective I have therefore meant primarily a reference to external re-

lations among realities made up in the main of relatively independent fact, facts whose 'dependence' upon mind constitutes the least of their claims to immediate contact with the real. This notion of externality, along with that of embodied order or organization, have appeared as the essential characters of things that oblige us to regard them as real in the relations of human beings, and I do not see any final reason why we should regard order as in any unique or exclusive way internal to the reals to which it gives form. But here once more it has seemed to me that the great pains sometimes taken to distinguish the external from the internal, and the implication which the process carries that the ultimate of reality is directly involved in the distinction, is largely so much labor lost. It does not appeal strongly to me to argue that respect for ideas and for the Idea, which is good title to 'Idealism,' is necessarily involved in such distinctions. Many things are real besides ideas, even if nothing is true or real in the absence of ideas.

I hope I have been cautious or at least prudent in attempting to go all the way which my presuppositions have marked out for me; at certain points the very fundamentals upon which life itself rests have been called in question in the interest of objectivity, on the strength of the truth that the life of the spirit is maintained only at and through the risk of its loss. I am well aware, for example, that the existence of human society is perhaps jeopardized in the changes which seem necessary in order to derive a human good from property as that institution at present stands; but the risk seems to me preferable to the assurance that humanity shall not have that good, which is something near the present meaning of property. I believe that I am aware also of what is negatively implied in the abandonment of the concept of authority; but the significance of the fulness of freedom which can only come through the positive coöperative organization of men on other lines than those of a hierarchy of authority seems to me preferable. So long as there exists the possibility of a general war, or the necessity that one man should live and work *for* another, there is all the refutation that can be required of the principles of organization upon which human life rests; and humanity might better risk its destiny in an intelligent effort at reconstruction than in the blind carnage that is inevitably its alternative.

CHAPTER II

THE SOCIALIZED MIND AND THE GROUP CONCEPT

The science of politics seems to have gone pretty much out of fashion of late, and the practice of politics to have fallen into discredit with the larger mass of mankind. Clearly this is true if we accept the original meaning of the term politics as its proper meaning. Politics, considered as a form of knowledge or science meant, for Plato and Aristotle, the system of rational principles necessary to the weaving together of human motives and purposes into such organized objective form as would give to human life objective wholeness and harmony. Practical politics meant such a control of the objective conditions of life as would permit to this organized body of purposes full and adequate expression in action. It is characteristic of the Greek view of politics that for it the sharp distinction between the individual and the social or public in human purposes, which seems so natural and necessary to the mind of the modern, did not exist. It is true that by the time that Greek political theory was written the distinction had been made; but it was regarded more as a sign of impending dissolution of the natural harmony of human life than as the central fact around which the existing order was to be conceived to have been built up. The Greek was therefore able to look upon the phenomena of human life from the point of view of its objective natural wholeness, and he did not, as moderns do, interpret life as a scattered wilderness of warring fact into which some degree of order is to be artificially achieved by sheer force of technical cunning. At any rate, the conception of a human *order* maintained in the perfection of harmony by the universal idea of the good operating as law, as inherited from the Greeks, has not been lost. The two points of view indicated above, however, have taken on the

form in contemporary thought of distinct methods, and have both assumed, as it seems, that individual purposes and the public or social purposes are incommensurable except upon the condition that one or the other undergo essential modification, or that one become lost by absorption in the other. Thus we have on our hands the "social problem." The point of view in ascendancy at present, whether it regards itself as "individualist" or "socialist," presupposes a world of human fact which, by nature, is without law and under the domination of natural force. Its problem is therefore how to construct an ordered whole out of the distracted mass of 'collective' fact. The attempt to formulate this problem by the methods of modern science has thrown the older 'rational' politics into neglect, and political philosophy has given way to an alleged science of society under the name of sociology. The types of category by means of which sociology undertakes to establish its prior right to the position formerly held by politics or political philosophy—categories which presuppose an analysis of the nature of the mind or individuality involved, the form and characteristics of the external order, the nature and necessity of law, etc.—are here passed in review. It is postulated that the 'social problem' comes into existence from the supersession of a natural tendency to order in human relations by an artificial system of technological devices, devices made necessary by the adoption of a false theory of order or organization, and that the reanalysis of fundamental concepts will disclose the ground upon which the false theory of order will have to give way to a more adequate conception of real law.

I. SOCIETY AS A COLLECTIVITY OF SIMPLE INDIVIDUALS

The discussion of the theory of society held by sociology may begin with some characteristic definitions. Giddings¹ tells us that sociology "may be defined as the systematic description and explanation of society viewed as a whole." Such a statement is of little consequence until we are told what to the author's mind description and explanation imply. Implications of method are indicated further on in the statement that

¹ *The Principles of Sociology*, 3rd edition, New York, 1896, pp. 5, 6.

sociology "is an interpretation of human society in terms of natural causation" (p. 7). Natural causes are "physical, vital, and psychical causes, working together in a process of evolution" (p. 8). It is through these that the explanation of phenomena is possible, since they determine what it is that "stamps a phenomenon as social" (p. 13). But phenomena can be known "only because they repeat themselves" (p. 15). They are therefore external to each other and their relations are those of physical impact, so that "social intercourse is possible only to a race that keeps alive the instincts and habits of conquest" (p. 102). Association of human beings is determined by strife and conflict (p. 100 f.), and "Antagonism within the community can disappear only as fast as tastes that are exclusive make way for tastes that can be enjoyed by many . . ." p. 123).

It thus appears that human relations are conceived by Giddings after the analogy of physical relations, and the human being as an isolable unit. He does not avoid mechanistic consequences by his constant insistence that "society is essentially a psychical phenomenon" (p. 400), nor by the attempt to explain society in terms of consciousness. The social body, as composed of a collection of units, is still a mechanical body in spite of the fact that it is made up of consciousnesses, which appears from his definition of the social consciousness as "nothing more than the feeling or the thought that appears at the same moment in all individuals, or that is propagated from one to another through the assembly or the community. The social mind is the phenomenon of many individual minds in interaction, so playing upon one another that they simultaneously feel the same sensation or emotion, arrive at one judgment and perhaps act in concert. It is, in short, the mental unity of many individuals or of a crowd" (p. 134). "But even self-consciousness in any given manifestation is only a momentary bond" (p. 140). Further, like-mindedness¹, which means "a close resemblance between the ideas, emotions, and preferences of any given individual and those of other individuals who live in the same social group with him" (*The Elements*

¹Giddings' conception of "consciousness of kind" (*Principles of Sociology*, 3rd edition, N. Y., 1896, p. 17) is referred to by Baldwin as the "climax of descriptive vagueness," *Social and Ethical Interpretations*, 2nd edition, N. Y., 1899, p. 483.

of *Sociology*, N. Y., 1915, p. 120), gives the author his conception of the social mind. The social mind is a product of integration or combination. (*Elements*, p. 124).

Sociological theory thus seems still to rest upon the Spenserian philosophy, or preferably, physics of society. In such a point of view there seem to be three dominant conceptions, which, whether embraced consciously and deliberately or as merely followed instinctively, from the beginning govern the results that are to be reached in current speculation upon problems of social philosophy. From the earliest beginnings of systematic thought one of the ultimate objects of thought has been to find a conception which would be complete in itself without reference to or dependence upon any other conception, one which would be secure in its own integrity. This motive has given rise to all the methodological devices which, taken together, determine what may be called the structural aspects of the knowledge process. Its essence is that what appears objectively in experience shall be self-contained and seen whole with respect to certain relations which, it is assumed, are immediately felt to constitute the inner structure and purposes of objective appearance. It is the demand that what *is* shall at the same time *be its own meaning*; that mere existence automatically shall carry with it a total significance experienced as corresponding to what is immediately given as fact.

This motive of thought has throughout the history of logic turned upon the concept of homogeneity, and one of the characteristic ends of thought has always been to discover and identify *the simple*. The meaning that simplicity seems to possess all along is that of material homogeneity, or the idea that what is should be "all of a piece" in the sense that it is qualitatively alike in nature all the way through. That this demand was a crude materialistic conception for the most part is shown by its tendency to regard spatial and quantitative differences as the only types of real difference. That is, the presupposition behind the conception, as what is uniform for all phenomenal instances which the conception represents and is therefore negligible, escapes notice and the result is conceived as uniform quantitative likeness. The distinguishing characteristics of the real, then, just because they are universal, are negligible, and the real may be defined in this point of

view in terms of its particularity, of that which it possesses in itself without reference to anything beyond itself. The real is, as the scientist would say, isolated, distinguished from its *ralata*, and can be given a quantitative differentia which makes no reference to anything beyond itself. It is a definition of the real in terms of abstract content, which differs in no important respects from a purely formal determination. The real can then be "known in repetition" just because any instance is exactly like any other instance; because any instance is a sample of the real in that it differs in no wise from any other. But it is not a symbol of the real in that it suggests that the real should have as a whole a meaning in its references to single instances. The differentia of the real is, on this view, the possession of unique sensible quality. Contact among reals being thus cut off in advance, since sense qualities are not media of relations, the problem of unity in the sense of how to get together what the presupposition has already put asunder, becomes extraordinarily perplexing. There is left under these conditions only external relations as possible to any things that are real. And as external relations, no amount of description or of appreciation of them can ever make them divulge a connection which is denied them in advance. When reals are considered as human beings, i. e., when the question is as to the ground of social relations, the only suggestion which carries any hint of principle is that of association, and this concept is a presupposition of the political atomism of individualism.

The consequence of this logical impasse is an attempt to return from what are almost invariably psychological considerations to the neglected aspects of quantity and spatiality, the purpose appearing to be to find for social theory a ground in the objectivity of scientific fact. But this merely means going from subjectivism to positivism. Under the prejudice of simplicity the general or essential nature of quantity and space is overlooked. Only the cardinal aspects of quantity are considered, thus limiting the significance of simples to their local and repetitive functions, which is equivalent to restricting them to a *locum tenens* capacity only, their only meaning lies in their holding a position which is not even determined for them by their relations to other simples. Then abstract plur-

ality is the only common quality which the real considered as simples can have. The importance of anything consists in its "essence"; in its being what it in itself is, as different from other things. It has status and importance only in the fact that it stands alone, and while the attempts usually made to give it description take positive terms, the fact that all significant quality is denied it in advance, results in the awkward necessity of saying what the real is in terms of what it is not. This seems to explain the general preference for the character of "uniqueness" upon which the basic social relations are often "explained." We have thus all the myriad questions about negation in metaphysics, and all the extraordinary list of difficulties which in logic result from the use of the negative judgment, since we ordinarily fail to reflect that the prime function of negation is not to describe the real, but to guide the process of positive description by rejecting some descriptive qualifications as inadequate. In epistemology the attempt is made, under the false demand of simplicity, to find a place from which the process of experience can start, thus raising the whole batch of unreal questions about origins and the given. The same attitude of mind results, in scientific procedure, in the prodigious fallacy that 'facts' are found, that there are realities that can be exhaustively estimated in the statement that they are 'data,' and that as such they require no further attempt at explanation. And the injunction to 'get the facts,' to 'stick to the facts,' represents more dogmatism than all the metaphysics that furnish so much merriment to the mind which requires a solid ground of fixity in the existential as a presupposition of all science. The same dominance of the idea of the simple results in the mistaken evolutionism which assumes the obligation to explain origins, while, on the very presuppositions of evolution, all matters of origin are questions of qualitative degrees of difference, since time has been already presupposed as the common medium of fact, and is therefore negligible as long as the method does not at some point go beyond the facts. That is, origins are not, even on scientific assumptions, facts, but the element of principle of method by which facts are explained; and, as such, when called to the attention of the mind committed to the facts, get themselves confused with the 'data.' Such considerations as these show the futility of the earlier sociological assumptions of the

"primitive man." An aspect of method has been confused with the facts which the method attempts to explain.

Thus all attempts of students of society to find the key to its nature in the 'simple' forms of its earlier stages, are foredoomed to failure. Such attempts contradict the evolutionary principles upon which they are presumably based. For, if evolutionary conceptions are to have any explanatory value, they must provide for the appearance within the developmental processes of nature of qualitatively new characters. They must look onward to the occurrence of novelty rather than backward to the permanently established in the shape of simple and underived elements. To appeal to the fixity of habit and custom in the organization of primitive human groups as the element which will connect early groups with the life of the present, is merely to prejudge the social organization of the present as dominated by the laws of mechanism and as void of any possibility of fruitful change. This is the sufficient answer to the attempt of sociologists to explain society by reference to the law of causation, so long as causation is understood as the principle of mere sequence of events. Such an attempt merely approaches the problem of human order with smug analogies derived from the method of natural science, and precludes any possibility of finding those ethical or political or religious values which are the content of the 'social,' just because human organization is presupposed as mechanistic. So long as society is regarded as composed of closed systems or groups whose characters are interpreted in terms either of mechanical contacts of their component elements or of external contacts with other similar groups, the result will be the arid and superficial thing that sociological science has in the main always been. It is encouraging to note that some of the representatives of the sociological motive are now striving for a better method; but their results are not as yet unambiguous, perhaps precisely because they have not yet freed themselves from the mere formal process of natural science. If the science of sociology is to be anything more than anthropology, it must find concepts more comprehensive than that of causation. Such concepts we shall show later (Ch. V) to be already implicated in the methods of natural science, and that natural science on that account goes far beyond mechanism,

II. SOCIETY AS GROUP, OR COLLECTIVITY SIMPLIFIED

The prevailing 'group sociology' is also merely an instance of the same general fault in method. The logical difficulty is met with in all fields of research. It is a weakness of the age; the exaggeration of a motive of thought which under necessary limitations is perfectly valid, to a point far beyond any possibility of logical justification. The concept of the social group is a case of the atomism which has dominated thought throughout the development of the modern period, and which has become notorious in its practical form under the name of individualism. That is, the 'group' method of explanation of human affairs, however scientific it may appear to be, does not save sociology from atomism, nor does it save social philosophy from the peculiar weaknesses of atomic individualism considered as a practical point of view. It is merely another instance of the logical fallacy of the simple. It assumes that science can start with individuals bound together in groups and neglects the fact that, so long as the method of analysis is held to, these groups must always be resolved back into their component atoms before explanation is possible. It fails to see that what it erroneously calls a group or collection is really a unitary individuality, and that the problem is not as to its origin or structure, but one of its active constitution. The group method is therefore no advance over the older method of beginning with the 'natural man' which characterized the development of juristic and political and ethical theory of an earlier period. It is a doubtful criticism of Hobbes, for example, to reject his conception of the natural man as dominated by such dispersive characteristics as fear and the instinct of self-preservation as the key to political organization, and to substitute for it a group of beings just as irrationally controlled by the dispersive reflexes become "organized" unconsciously in the group as habit or custom. In each case we are trying to erect a system fit for the qualities and capacities of man by stripping the man we want to fit into the system of just his distinguishing qualities and characters, and in both cases we are neglecting constitutional order as principle for origins and presupposed analytical simples. We are erecting a model 'society' as the proper environment for a rational animal after the pattern of the animal minus his

rationality. Similarly, economic theory, and the industrial system built upon it, has run amuck with the 'economic man,' and political theory, still under the influence of the formal and empty classical atomism, is languishing for want of a proper ground in the science of human nature.

Thus what may be called, from the legal aspects of the situation, the 'natural rights' period of the development of practical interests, shows in the later sociological interpretation of the situation, the same vicious instances of the fallacy of the simple in every direction. The difficulty is almost equally hard to localize as to correct in the theory or to overcome in practical application, and it represents, by various twists of interpretation, an attitude which is well-nigh universal. And, as will appear later, the demand for simplicity has this logical persistence precisely because it is a perversion of what, when made intelligible, is the very significant logical demand for unity. The ground of the mistake lies in assuming that unity may be attained by reiterated emphasis upon the unit.

A second phase of the sociological fallacy of the simple may be indicated by pointing out certain developments made necessary in sociological theory by the logic of the situation. There have been some very significant attempts made to avoid its more obvious difficulties—significant not so much because of their results as because of the fact that some of them have followed to their issue other lines of thought equally misleading and have thus contributed to exhaustive analysis of the facts. If it be granted that the isolable homogeneous entity which we have called the simple, and which reduces to quantitative characters, is alone the real; and if, as we saw is commonly assumed, the demand for logical order always functions through the endeavor to qualify relationally or give meaning to what is taken as fact; then abstract plurality is the only possible common quality which the hypothetical real simples can have. It is then possible to go on by repetition of abstract aspects of the simple to the expansion of the simple into a great variety of forms, and still hold to the original attribute of the simple as isolated and homogeneous. Such is the genesis of 'collectivities' such as the group, which involves both the characters of isolated unit and plurality of units. And this is possible because we forget that mere repetition, the

basis of the group idea, never *gets anywhere*; we deceive ourselves into believing in the onward movement of thought, while in reality the assumed movement is mere recurrent process. The mind mistakes its own mere routine for its rarer essays at comprehensive order, which latter occur only in the synthesis of the judging experience, and always result, not in collectivities, but in corporate wholes.

But however the psychological factors in the mental process are explained, the logical weakness is readily perceived. The given isolated fact, being interchangeable with any other, is indifferent as to its own qualitative content, and becomes important only in the process of reference to the 'other,' which in turn is of importance only in reference to a third—the infinite process of causation. The reference is not of meanings; quantitative reference is merely the abstract demand for meaning, and what is abstract can never come to satisfactoriness and is therefore infinite. But so long as causation is a reference of particulars to particulars—natural facts must be explained by natural facts, the principle as laid down for modern science—the circle of quantitative abstraction is never broken, and refuge is taken in mere volume of numbers of instances, forgetting that quantity and number are different ideas and that the transition from the one to the other is never direct.

As a result, the whole structure of sociological theory must carry the weight of limitation and defect which inheres in the causal conception when the latter is made to rest upon the elementary notion of simplicity as the unit, which invariably gets interpreted as the qualityless homogeneous. There is from this latter conception in the form of the group-idea, if we accept the presupposition, no escape except through the means of plurality and number, and the appeal to this carries all the burdens of multiplication of instances and pluralization of causes. To the already overwhelming body of 'laws' in sociology each new devotee adds his batch of 'principles,' the result being a vast collection of mere terms with little or no meaning. The necrology of sociological law would be, already at this early stage of the development of the 'new' science, the largest chapter in the history of the science. The difficulty here seems to be a confusion of the perfectly valid and useful logical conception of plurality of causes with what

we have termed the pluralization of causes, the habit of creating a cause to correspond to observed effects which represent no real data but which have been arrived at by faulty analysis of fact. Instances are multiplied by an over-zealous analysis operating under the influence of the demand for simplicity, the process being, it would seem, a practical application of Hume's principle that whatever is distinguishable by the mind is separable in reality, the interpretation of which being the more exhaustive the distinction the more ultimate the reality. So from the isolated unit the only escape that is left to the method which creates the isolated unit is by the indefinite repetition of instances and by the finding of a plurality of causes. But the fact that an instance can be repeated is no evidence of the discovery of a cause. This explains the tendency of sociological theory to the exhaustive and laborious explanation of facts which can be explained very simply, and to the cataloguing of a great variety of 'laws' and 'principles' that have been discovered.

III. SOCIETY AS SUBJECTIVE COMPLEX OF INSTINCTS

The method of causal explanation through simplification and pluralization employed at the present time by some of the best known of sociologists does not differ materially in many points from some very old types of magic. It is this simplifying motive that is responsible for the demand for the classification of instincts. It is perhaps also responsible for the existence of "social psychology," a 'science' whose place in the scheme of knowledge is unusually difficult to see, and perhaps can be seen only by those who misapprehend the facts which the 'science' is supposed to organize. Given an adequate politics as an interpretation of individualities of the higher classes and the necessity for "social psychology" would at once disappear. Thus one outstanding trait of McDougall's "Social Psychology" is the attempt to discover a specialized and isolable instinct which is to serve as a cause for a corresponding type of individual or social reaction. Each fact of life is to be explained by reference to the particular instinct which is appropriate to that fact. A one-to-one correspondence seems to be sought between each overt response and an internal and innate capacity to respond in that way. The fact

that human beings are found together is explained by the gregarious instinct; an inner and mystical cause is assumed to explain what does not at all call for explanation, since it is the original datum, and the interpretation of the nature of which, and not its mere existence, constitutes the real problem for social theory. And this is the result of a point of view which insists upon the immediacy of the facts. The classical ironical example is exactly descriptive of the method employed: opium causes sleep because it possesses a soporific quality. It would be an interesting and valuable service to science were someone to convict it of employing magic in what is intended to be its most hard-headed and unimaginative use of the principle of causation, and the task might not be a peculiarly difficult one. Right at the point where sociology professes to be most rigorously scientific it adopts a method which antedates the very beginnings of science.

But McDougall's method in particular illustrates the most vicious use of the fallacy of simplification with its necessary effect of multiplication of instances and pluralization of causes. The simplifying of the real into the form of an indefinite number of interchangeable mechanically individuated entities isolated from each other makes necessary the splitting up of the conception of causation into an indefinitely pluralized collection of separate agencies. For each instance of fact, or at least for each group of indistinguishable facts—and the concept of group does not, as we have seen, differ from that of the isolated fact—a separable inner mental phenomenon must be found in the shape of an instinct whose function is to operate as a producing agent. But an abstract causal function is all that can be ascribed to such an instinct; no quality either sensible or imaginal can be singled out as belonging to it, and what does not possess quality is difficult to verify as fact. It is therefore an inference, not from observed facts or relations within the complex of fact, but one derived from the necessities of the mode of thought employed. Not an inference from facts of mind *objectively* determined, as all facts of psychology must be, but an inference from the subjective processes of the thinker, and as such void of any claim to validity. That is, McDougall's instincts are not real qualities or functions of mind determined by the proper objective method of science, but reflex results of the imperfections of his method,

which are responsible for such a perversion of the facts as will give a certain plausibility to his classifications. It is magic.

But the point most difficult to understand in connection with McDougall is, what conception of mind can correspond to his description of its multiform and variant functions. What sort of mind is it that has or is the medley of instincts he describes? Perhaps it is the purpose of "The Group Mind" to answer this question. But it is doubtful whether this volume understands this question.¹ It is perhaps not unfair to take his writings as representative of what now passes as sociology, or in any case to be fairly representative of social psychology. While the outstanding question at present for the sociologist and social psychologist seems to be the one which McDougall gives a great deal of space, viz., that of the classification of instincts, it is suggested here that the whole matter of classification of instincts is unimportant,² and has become mooted only because of the wide prevalence of the fallacies indicated above. Given a plurality of instincts isolated from each other or related only by external combination, the conception of mind made necessary is that of a sum of parallel and rectilinear functions which can never converge upon a point of meaning or purpose. The loss, or the acquisition, of a function, granted the possibility, and it seems to be the idea that mental development is by acquisition, will affect merely the number of 'reactions' of which the mind is capable. A cause can produce only its appropriate effect; so a combination of causes can produce only the train of effects which represents the causes *seriatim* or coexistent, in any case a one-to-one correspondence between the multiplicity of effects and the diversity of causes. The sex instinct leads to the family or to vice, the gregarious instinct leads one to associate with his fellows; but gregariousness does not lead to general association in the same way that sex leads to the association of the sexes in the family. But this means that the important fact is not the instinct, but the association. They are distinct instincts; and already the facts are hopelessly confused. The instinct of pugnacity, let us say, leads one to fight, but it is the instinct to secrete that leads to the hiding of what from the

¹ Cf. the article by S. B. Ward, *Mind*, XXXIII, No. 131, p. 275f.

² See Faris, "Are Instincts Data or Hypotheses?" *American Journal of Sociology*, XXVII, 2, p. 184.

instinct of hunger is taken from another because of the acquisitive instinct. And thus the attempt to distinguish instincts results only in a jumbled mess, and constitutes incontrovertible evidence of distortion of the facts. On this view experience can progress only by the centrifugal method of dragging one segment along at a time. But as for any meaning for mind that can be significant in the practical relations of life in society there is simply none at all.¹ No total meaning is conceivable for such a hodge-podge mind, so that in the fields of politics, ethics, law, etc., where the question of directive control becomes insistent, such social psychology has simply nothing to say. And that it has nothing to say is shown very well by what a writer like McDougall² delivers when he undertakes to discuss such problems. Law will be the instrument for the domination of one class by another—a conception which, by the way, seems verifiable and necessary on a certain interpretation of fact—and its application will be effected by force, since no other or higher conception is accessible to the mechanism which defines it thus. Society in all its aspects is dominated by the struggle for existence; it is a mechanism whose parts move upon each other under the laws of inertia and friction. And again, the situation seems demonstrable upon a certain interpretation of facts. Strife is therefore the portion of all life, and our 'scientists' are fearful now for the fate of the *dominant* race at the hands of the *inferior* races.

The problem, then, for the science of society as represented by sociology is how to get unity and order after the adoption of a method which precludes the possibility of the existence of unity and order. Upon the assumption that everything real is ultimately to be discovered as fact, and that its discovery is somehow the basis of its reality, it turns out that there is little confidence to be placed in what we discover or find as fact. But the sense for fact is in the end sound, and what we either find or create must, as and if real, be found in some form in existing fact. Given a mind made up of separate instincts, there is no possibility of order or significant unity in either the personal or social life. The instinct psychology is thus a perversion of human nature, if human nature is to imply any reference to systematic order in reality. It can neither

¹ Cf. Bosanquet, *Philosophical Theory of the State*, London, 1920, p. xliii, note.

² See *The Group Mind*, New York and London, 1920.

in its theoretical nor in its practical aspects be made consistent with human nature as rightly understood. No ethics or politics or law in the significant sense of those terms is possible when human nature is thus mutilated. But this criticism does not imply that human nature is a given in the sense of a fixed quantity. It implies that human nature is continuous with the process of its own interpretation and is itself consequently in large part an interpretation. The objection to sociology is that it is a false interpretation. The reference is then back to the facts, but with no superstitious reverence for our preconceived notions of what the facts must be. The facts in their direct obviousness, and some respect for the investigating intelligence in its synthetic as well as its analytic capacities, are all the presuppositions needed for a significant social theory as a fruitful conception of human nature, but upon these presuppositions are based the practical disciplines of ethics, politics, law, which cannot be superseded by any psychology, whether 'social' or individual. It is the interpretation of life on a basis of these presuppositions that is the beginning of wisdom. And the interpretation of social fact is the one problem that must be reformulated if our practical interests are to be well served. A rational disposition of human interests and values as based upon such an interpretation is the first condition for a possible furtherance of the ends of human life, as also the ground of any consistent social theory. The importance of the problem does not require argument when we recall that every period of advance in culture has had its inception in a thorough-going analysis of human nature, and the reconstruction of the institutions of life which such analysis implies. The essence of the problem lies in the *fact of unity and continuity in personal and social life*. And this is not to be approached from the point of view of abstract theoretical simples, or of undefined realities that must await being found or got. It is a question of how to understand what is. And this requires the discovery, within the existent, of the real as a functionally individuated practical whole.

But the sociologists, even McDougall, recognize the necessity of unity. The question is, in what, for the sociologist, does unity consist? This leads us to our next point, and calls for a discussion of some further social theory.

IV. THE SOCIOLOGIST'S SEARCH FOR UNITY

The majority of sociologists who have attained wide recognition have followed the example of H. Spencer in his causomechanical philosophy of society. The fundamental conception of a synthetic character which gives to that philosophy whatever organization it possesses is that of integration. The word in its original meaning is very significant—the process of making into *one* or of making *whole* elements that are regarded as incomplete in themselves. It can therefore, so far, be interpreted as a protest against abstraction. But as used by Spencer, and also in current social philosophy, there are two far-reaching criticisms to be made of it. These criticisms have to do with the question (1) as to the nature of the elements that enter into the whole, and (2) as to the character of the process or principle by which a whole is constituted of such parts as given. It ought not to be necessary to formulate these criticisms in the face of the thorough-going analyses of the logical questions involved which have appeared in recent years. But the underlying fallacy persists. (1) In the first case the elements that enter into wholes of the sort dealt with in sociology can be said to be simple and their peculiar qualities negligible only after the grossest abstraction, and yet this seems just what is often done. And this is true whether the problem at hand involves the integration of human beings into an objective social whole, or is one of the subjective sort usually discussed in works on social psychology. The old social contract theory is an illustration of the first type of problem, and the instinct psychology of the second. In the one case the individual integrated into society is, from the point of view of politics, economics, and the prevailing type of ethics, whether of the rationalistic or utilitarian type, the quantitatively isolated individual “one” of the equalitarian philosophy, each of which “counts for one and nobody for more than one.” It is to be emphasized that the fallacies of utilitarian and of rationalistic forms of ethical theory are logically the same. Both presuppose the isolated individual as the ultimate real. The individual is motivated (the physical sense of the term is the correct one) by a unique will which enables him to take his place in the social group, and the expression of which in characteristic ways constitutes the proper

life of the individual. And it is the capacity of this will to express itself in a way such as to be counted (no qualitative functions in expression seem necessary) which makes the basis of the individual's political activity. In fact it is the numerable aspect of the will as expressed in some centrifugal tendency which constitutes the human being a personality or an individuality. But it seems strange that the *distinctive* and *unique* will should be the means through which political activity should assimilate all individuals to the *same* abstract pattern. And yet with all the contradictions in the conception of individuality which rests upon the analogy to physical facts, and in spite of the fact that they have been frequently pointed out, the atomistic conception of individuality remains the basis of the majority of work done within social fields. Very interesting attempts in the opposite and more promising direction are, however, appearing from certain quarters, and a new type of practical philosophy already has its foundations laid in their larger logical outlines.¹ These are, as they must be, adaptations of the classical theories to the facts of modern life.

(2) On the question of the principle of integration, criticism rests upon the general methods of scientific analysis. These methods have become the basis of the traditional empirical philosophy, and the precise point at issue is whether that philosophy is, as it purports to be, a rigidly accurate account of the facts of experience. The particular form of empiricism which is prevalent at present, in so far as it affects social theory, is that given by Spencer.² But it can be shown, I think, that current types of social theory are degenerations of, rather than improvements on, the original Spencerian. When we look into these types for the basic categories which express the various meanings of integration we find them indicated by such terms as combination (Giddings), association, group, etc. The intension of the term combination is clearly taken over from physical science; the term association is the direct descendant of the ideas governing the associational and sensationalistic psychology; while the idea of group seems to

¹ Cf. for example, Bosanquet, *Philosophical Theory of the State*, 3rd edition, London, 1920.

² In spite of Professor Cooley's statement that "nearly all of us fell away from him sooner or later and more or less completely." *American Journal of Sociology*, XXVI, 2, p. 129.

be the peculiar product of modern sociological thought. Or, the last may be a mere extension under the influence of the motive of pluralization, of the old term "association," which had an individualist and subjective intent, so as to include interpersonal relations. The corresponding practical terms which represent prevailing political and legal ideas are those of contract, possession, or property, and corporation. These latter have not been subjected as yet to the necessary logical criticism, and it is to that task that later chapters of this work will be devoted. It will appear that the problems involved are of extreme difficulty, and cannot be resolved by resort to traditional legal or political shibboleths.

The conceptions of combination, association, etc., have had a fair share of critical discussion among the different groups within the sociological field itself. But the discussion has rested for the most part upon a questionable psychology and a still more questionable atomistic logic, and the problem must be attacked anew. Here again it must be remembered that the understanding of human nature is the beginning of wisdom. This the sociologist seems to have recognized; when criticized upon the ground that their thought has been vitiated by the prepossessions of physical science, they have replied that the facts which enter into combinations are psychical facts. But this reply has not helped their position, and for three reasons: In the first case it has resulted merely in dehumanizing the psychical facts to the level of physical relations, in spite of their vehement insistence that the facts are mental. In the second, while they have succeeded in giving a real mental content to the facts, these have been interpreted in terms of individualistic psychology, which puts the possibility of a real unity of social life entirely out of the question. And in the third place, they have failed to see that social life is not "mental" in the sense of belonging to individuals, but that it gets its mental or spiritual nature by its being objectified through an institutional determination. These latter propositions will get amplification in the two following chapters.

To take up the first point. It is of little consequence to insist upon the 'psychical' character of facts so long as the organization of the facts is effected upon causal or mechanical principles, since the organization of facts largely determines their constitution and nature. And while for psychology such

procedure, recognizing the ontological limitations of principles of logical convention, is valid, the facts systematized are not the facts of practical relations such as make up the content of ethical, political, or legal activity, but artificial abstractions of such real relations. The psychological account, being restricted by the limitations due to its dependence upon natural science, gives an account of only the quantitative and external aspects of mental facts, and leaves the appreciative or value aspects quite untouched. And this means that psychology is not a practical or normative science, but one committed, by the nature of its method and presuppositions, to the atomism and mechanism characteristic of all physical enquiry, where combination and association are in their proper element. Facts then, combined or associated upon psychological principles, even though they may be recognized as "mental," are not identifiable with the realities of political or social life. This may be merely so much the worse for psychology, yet if the term is to retain any consistent meaning its fundamental differences from the interests concerned with the real intent of experience must be continuously recognized. So the appeal to the mental does not deliver us from the hard causal necessities which govern the nature and relations of inert things.

In the second case, the appeal to the mental has been in effect to accomplish the subjective. This is due to the error of supposing that what is mental must be inner and private, must have residence within the skin of the natural individual. Combination of entities conceived in this way often takes the mystical and trifling form common to much of the dribble of the 'publicist' and persons with 'spiritual' motives. It is the error which points always to the 'spiritual' and 'ideal,' which 'means' a perfect order of driveling sentiment and shallow feeling while it at the same time accepts the baseness of an actual shambles if it comforts its supporters with privilege. It is at this point that sociology makes its close contact with religion, although an observable but so far practically negligible tendency toward a more hardheaded interest in immediate life conditions promises to revitalize both. But it is also from this tendency to emphasize the subjectivity of feeling and to make it the basis of human relations that many of the difficult questions of the human sciences arise. Thus, starting with metaphysically inner unique persons in their pri-

vacy, there is not only difficulty as to what any kind of organization or association of them is to mean, but the still more difficult question of the interpretation of the inner realm into terms of the cruder overt forms of the actual in politics, ethics, and law. The extent to which feeling and blind passion have dominated such interests as politics and law or even an interest as stolid as that of "business" may be explicable on the supposition that social fact is "mental."

Difficulties in the third point are quite as mischievous for social theory. Experience is not 'mental' in the sense of belonging exclusively to individuals, but objective in the sense of being institutionally determined. Unless there is some special aspect of personally individuated life which has its meaning outside the narrow confines of private purposes, it is nonsense to talk about 'social' relations or of human order. In fact, the ordinary practical conceptions of contract, agreement, etc., can have no meaning but impact and composition of forces so long as we think of perfectly distinct entities which can only *come* together, and it makes no difference whatever whether the elements that are distinct are mental or of any other kind. The important matter here is not the qualitative elements according to which the distinction is made, but the distinction itself, while distinction is taken in the absolute sense of separation. There seems to be neglected the important logical consideration that all distinction rests upon a *fundamentum divisionis*, and this, if it means anything, implies a ground of positive likeness, not superimposed upon the real by its apartness from mental entities, but inherent in the essence of things considered as prior to the distinction between mental and non-mental. The basis, then, of what is real in the system of social relations is not the original distinguishability of the parts within the system, but the positive character of unity which gives meaning to distinction within the system. It is the concept of ground rather than that of cause that is the social *fundamentum*. And this ground as positive fact is the institutional form which human life everywhere manifests, the objective and plupersonal¹ order which gives significance to all

¹ The term is used to avoid, on the one hand, the limitation of personal characteristics merely to natural individuals, and on the other hand, the extension of personal characteristics to a metaphysical ultimate person. In later connections plupurpose will be used in much the same way to avoid the

distinctions into lower forms of individuality that make up its content. It is difficult to conceive what can be meant by insisting that this positive logical ground must be some form of subjective 'inner' particularity, or some metaphysically isolated center whose main quality is its self-containedness and Aristotelian 'independence.' Mind itself is objective; and it is this aspect which gives the degree of reality to mind which makes descriptive and logical consideration of it possible. And it is the same objective mind that is the ground of all practical interests. It is unfortunate that the same idealistic movement which in its earlier stages attained its significance because of its development of the concept of objectivity, is now in some of its forms the most intransigent partisan of a narrow and subjective individualism. This concept of the objectivity of the *content* of mind must get its proper development in another connection.

The attempts of social theory therefore to save itself from the limitations of its own presuppositions have not proved very gratifying. The sociologists have without notable exception taken a rather superficial and immediatist point of view. This is probably justifiable on the ground that the science is new; but the dodging behind novelty can not be resorted to indefinitely. There seems little in its newer or later developments which can be ranked as distinct accomplishments, while most of its solid ground is as old as Aristotle. And, as *Aristotelian*, is properly orientated about fundamental ethical laws, which defines social theory as the principles of political activity inspired with ethical purpose. But the new motive of sociology, it may be supposed, is its attempt at a re-analysis from the historical and critical points of view of the facts of human nature. But then it should show a little closer adherence to that purpose. If it can develop a method appropriate to the institutional and objective form which human life has always possessed, it bids fair to take over the older and perhaps obsolescent sciences of economics and politics. Its main strength is coming at present from its contacts with philosophy, although these contacts are as yet slight and are apparently in the main spurned by sociologists. It is to be hoped

reference to natural individuals on the one hand and to metaphysical purposiveness in nature on the other. Positively, the term refers to the series of institutional individualities in between the two extremes named.

that the futile effort to "get all the facts" has run its course, and that there may be some effort to *assess* or evaluate facts that do not require to be so exhaustively hunted out. This, I think, is the significance of the return to the earlier and more logical researches of Baldwin; and it perhaps explains the importance which men like Dewey, Russell, Hobhouse, and Bosanquet now begin to have for social theory.

V. THE CONCEPT OF OBJECTIVE ORDER IN SOCIAL THEORY

We have been saying that the difficulties encountered in social theory are due to a set of faulty logical and methodological conceptions that have controlled its development, and which have been taken over from a too narrow estimate of the purpose and possibilities of scientific procedure. There is no purpose to argue here that any form of theoretical research need differ from the essentials of scientific method. Logic itself, in one of its principal aspects, is the science of scientific method. There is no method for science that differs from the natural method of thought in any other type of endeavor. Science has no monopoly on the way in which thought seeks to compass its end. There is, in fact, more or less independently of the ordinary applications of what is called science, a science of scientific method—logic. And the one unambiguous thing that logic teaches in this connection is that thought has a uniform and universal way of going about its purposes, whatever may be the nature of the fields of fact involved. And this holds true, I think, regardless of the differences in our conceptions of what constitutes logic. All special claims, then, to a peculiar method supposed to be confined to a particular end, are but perversions of the uniform procedure of thought. It has been the endeavor to show that the concepts of simplicity, pluralization of causes, integration and combination, are elements of method perfectly valid for specific problems where causation is the principle involved and where a mechanical system is the type of organization implied. But just because these conceptions are valid in this connection, they are incapable of extension so as to cover the operation of other types of law and other kinds of organization. It is true, of course, that scientific procedure reaches its descriptive end in classification, but that does not necessitate that classes

should be all of a kind. And it also does not prevent there being other ends than classification, ends where a mere description of qualitative kinds has little meaning. It is the attempt to reach conceptions other than causal organization and descriptive classification that gives certain current tendencies in social thought their importance. Many of these have at least their suggested origin in the work of Baldwin.

Baldwin realizes at the outset the prime importance of avoiding the tendency to simplification, especially in handling questions dealing with the organization of human affairs. His main purpose seems to be, for practical, i. e., ethical, political, juridical, etc., purposes, to overcome the sharp distinctness between human individuals¹ and to show that even in the *content* of the lives of persons most, at least, is common to individuals, and therefore not private to any real individual. His emphasis is upon the public character (Ch. VIII, Section 3) of the content which is the uniform stuff of life independently of the breaking up of life into individualized centers (p. 87). Or, to put the matter in logical terms, and negatively, what he hopes to do is to destroy the absoluteness of distinction in order to get rid of the negativity and emptiness which distinctness implies. A metaphysically distinct individual is the nearest possible logical definition of nothing; and it has a positive significance, if it has one, just because of the *indistinct* presuppositions of positive quality without which thought cannot move at all. Baldwin's insistence therefore upon the natural relatedness of persons in the life of experience; of the mutual give and take in their psychological evolution and their mental endowment; of their commonalty² of life in their objective reactions to the environment which conditions life; above all, his emphasis on the fact that the environment of persons is *persons*, and that the content of a given life is largely other lives and that the common stuff of lives is thought experience; all these ideas set him far in advance of most sociologists who write at a much later period. He is therefore approaching the objective view, the view which attacks the problems of life and order objectively and more or less regardless of the particular individuals through which the specific aspects of

¹ *Social and Ethical Interpretations*, 2nd edition, N. Y., 1899, pp. 12, 16, 24, 80.

² *Social and Ethical Interpretations*. Society as a "quasi-personality," pp. 513, 517-518.

human life get expressed. Human organization, he sees, is not an individual achievement, although the result is an individual. He recognizes the individual as the point of particularization of a universal human relation; the individual is therefore a practical (ethical) conception, and indicates the point where a universal realizes itself in concrete objective form.

But Baldwin hardly succeeds in freeing himself from the lapse toward simplicity. He seems to regard himself as under the necessity to explain *how* the real content of life, which, it would seem, is for him *originally* the mass of private subjective experiences, *becomes* objective,¹ where he should have accepted as a datum an objective public universal life, the 'general will.' Even sociology cannot create, or explain the origin of, facts. He seems to wish to justify the objectivity of life by explaining how it came to be from the innate tendencies of individual consciousnesses in their inherent urge to express their uniqueness. That is, to explain the obvious, he constructs the fantastic and imaginary. He forgets that fact is not as such a practical conception, and consequently, while it remains a datum, is not to be reconstructed, but to be recognized. And by all means it is not to be reduced to absolute distinctness by analysis; in other words, it is to be taken with and in its immediate content, which, as meaning, is the universality of the whole to which it belongs. This is the real content of the real, individuality, wherever found. Baldwin's very laborious analysis of the personality into the subject, object, eject, project,² is unfortunate. These conceptions seem to represent a series of efforts through which the author attempts to show how order in human affairs issues as a consequence of the innate and inherent uniqueness of the individual operating as a cause, whereas, such an individual is precisely what he is trying to avoid. It prevents his ever giving any consecutive or integrated meaning to a host of the most important single suggestions to be found in the literature of social theory of recent years. How much 'simpler' and truer to fact would it not be to begin with the person in his environ-

¹ *Social and Ethical Interpretations*. "They become social only when society—that is, the other members of the social group, or some of them—also thinks them, knows them, is informed of them," pp. 487-8.

² *Social and Ethical Interpretations*, 2nd edition, New York, 1899, pp. 8-9.

ment of persons and things, organically bound to them in a way that may be disturbed even for descriptive or theoretical purposes only at the expense of the reality of the whole? It is this unity then that is the unit; and no real unity can ever be found by the analytic effort at simplification to sameness. But this latter seems to be what Baldwin seeks to do; he starts with the unique individual of popular metaphysics, and by analyzing it into its ultimate distinctness, tries to show how this inwardness gets out of itself and identifies with the other through minute distinctions *within* its own nature; how, in fact, the individuality repeats itself in a plurality of qualityless others, and thus loses the significance of his original conception in the lapse into abstract causation. It is thus strange how the demand for distinct uniqueness leads to its own contradiction in the mere numerical unit of repetition. And the result for practical interests is fatal. Political order is then possible only because of a compact between the individuals which enter into the order. This compact is something external to the natures of the individuals concerned, and is adopted as a form which has no inner relation to human purposes. Such an external form can command recognition on the part of persons only because of another external device, viz., the "power to compel" of the law. This explains the modern state as resting on authority and force. A state then can be 'explained' only by showing how it got formed by a hypothetical 'real meeting' of individual wills. It gives us a legal system based upon the concept of contract, and that sorry collection of half truths which constitutes the modern legal tradition on that subject. Yet all these consequences seem clearly implied in Baldwin's point of view. In fact all our practical relations are intelligible, it would seem, only from the point of view of how they happened to become what and the way they are. That is, the explanation of anything is assumed to be a description of how it could be formed out of combinations of simple parts. It is unfortunate that a discussion so highly suggestive as that of Baldwin does not succeed in establishing itself upon more adequate principles.

The 'historic' explanation, which operates in Baldwin's thought along with the analytic, is no more satisfactory than this, and it differs from the analytic primarily only in that the parts are time periods. But this is a distortion of the mean-

ing of historical explanation; history is not the linear arrangement of facts in a time regarded either as a quantitative cumulation toward a final term, or as an infinite process. So the whole point of view, when stated in either the analytical or the historical form, neglects or is ignorant of Aristotle's dictum that the State—and he meant all other forms of real order also—is *natural*. The State as a form of order of persons did not come to be at all, no more than did the persons whose order it is, and it was not ever made. The *fact* is that the element or unit of social life is society; the objective totality of objective interrelationships (they are not all personal) which is at once content and environment for the individual life. The ultimate fact is objective mind. It is from the outward aspects of life through the objective complication of ordered purposes, and not from the inwardness and distracted separateness of abstract uniqueness, that our insight into the reality of the order of life is to come.

It is the significance of this last suggestion that makes some of the writings of Dewey¹ of considerable importance for social theory. Dewey's conception of habit and instinct as the raw objective stuff or content of life whether in the individual or the group, and identified with the objective overt activities through which the lives of individuals are co-ordinated toward common ends (if this is what he means), is a most suggestive conception. It is true, as he is aware, that in doing justice to the facts in this connection he is doing violence to the accepted terminology. But the difficulty is not, however, so much one of words as of vague cryptic sinuosity of phrasing. And it may be due to a facility of expression and consequent obscurity of meaning that his method seems to avoid the common type of subjective particularization that has emasculated most current social theory. In any case, Dewey shows that the isolated spiritual individual is merely a function of a mistaken attitude to the facts, and the methodological fallacies of simplification and pluralization² are shown up in their essential futility. And it appears clearly that the problem of combination or integration persists merely because of a faulty conception of the nature of the complex of interrela-

¹ See *Human Nature and Conduct*, New York, 1922.

² *Human Nature and Conduct*, New York, 1922. Part II, Section V and VI.

tionships which is to be ordered. The socialized mind becomes for him then a reference to the outer mass of human interests and purposes, (he seems to prefer the biological terms, habits, etc.) which are controlled by the system of ends that are objectified in human institutions. And the idea of the unity of this system identifies particular aspects as means with the general or mutual aspects considered as ends. Then the problem of how the concrete content of individuality gets incorporated within a higher non-individual body of society appears for what it is — a misapprehension of immediate meaning of fact. To ask for the meaning of specific fact is to ask for the qualitative nature of the mutual whole in which the fact appears. The mere idiosyncrasy of calling the latter a "situation,"¹ if the word for him implies wholeness, need not prejudice his very significant conclusions or misguide any reader; for to call an instance of the real a 'situation' does exactly as well as to call it a 'whole.' Either means what it can be made to mean, by conformity with principle and in terms of consistency with fact. In either case the term employed is merely a designation for a descriptive account of a complex of fact which is at once the unit and bearer of meaning.

The point of meaning seems to lie in the element of spontaneity which Professor Dewey attempts to inject into the idea of habit. This attributes meaning to habit, while from the ordinary view habit represents mere routine. This imputation of meaning avoids the implication of fixity that has unfortunately been emphasized in the sociological account of imitation, which latter the sociologists have tried to make represent habit in its dynamic or active sense. It is strange that the sociologists were so backward in seeing that if social life were dominated by imitation, in the sense implied in the mere repetitive function of habit, no cumulative effect would ever be possible, and society would forever have remained the dead mechanism that the theory assumed it to be until broken by something other than imitation. That the conception is partially true is attested by the slow development of certain peoples; but it is significant that where imitation has been made the *conscious* medium of culture, the culture has broken away

¹ It is, by the way, Dewey's followers who make a fetish of the "situation."

from the imitative system that was supposed to have produced and perpetuated it. But this only proves, what seems to be Dewey's contention, that habit is never mere routine, but is even in its most reflex form suffused with some degree of spontaneity. But it also proves that *mere* habit is *mere* repetition, and that any process that sticks to the form of routine is the infinite process, and that such a movement can be progress in no sense of the term. But it seems to involve more than violence to language when habit is taken to imply order and principle. Also there is imitation *and* imitation, as Plato says in connection with his discussion of the method of education.

It is clear that on the strength of the assumption of spontaneity in habit the prevalent doctrine of specific habit is due for some downright revision. There is the same logical difficulty in connection with the problem how an organized system of habit ever can be formed out of disparate particular habits as arises in connection with the simplification and pluralization of function in any other connection. That is, to state the individual-social question in terms of the organization of habits is a logical trick much like Weismann's attempt to reduce evolution to minute terms of processes in the functions of tissues, or like the doctrine of the struggle of the parts of an organism with each other, as if the evolution process were more nearly intelligible when writ small. It is not seen that what is wrong is the assumption of the simple. Social order is not intelligible on a basis of habit nor of any other subjective state or mental fact of any kind. Dewey's attempt seems to be the usual one to *make* social order out of subjective bits as parts. Plato's suggestion that a man with a disabled finger is a man sick as to his finger must hold as principle in all pluralities where any idea of order appears. If social psychology or any other psychology, even the psychology of habit, is to claim its proper normative or regulative function, it must find some principle of the whole. The doctrine that the real is always a specific situation means that *only the situation, i. e., the whole, is specific; i. e., species-forming and indicative of principle*, and the attempt to specialize further becomes the infinite process that rests upon a distinction without a difference.

A similar criticism applies throughout to the commonly accepted theory of instincts which Dewey seems to embrace.

So long as instinct is supposed to be explained by the assumption of a number of fixed heritable modes of action represented in the classifications there will be no possible way of demonstrating *continuity of life functions* either in the individual or in the social body. As Professor Faris has shown, the classification makes the instincts and does not find them; they are logically necessary as a variety of separable functions only because of the hypothesis accepted as a principle of explanation. The variety of instincts comes from the necessity for 'scientific' purposes of breaking up the original unity of life functions. A more rigid examination of the facts of action and of feeling, which are the experience-content of instinct, discloses a primitive biological phenomenon as the basis of all the supposed instincts. It is this as a unity which determines the significance of the 'instincts' in the practical life; and a closer survey of their more complicated expressions shows very clearly that the variety they display is due to modifications effected in the life of the individual, considered as this primitive biological fact, through complication with habit and learning. The explanation of the variety of instincts as due to developments within the later experience of the individual has been put very effectively by Pillsbury.¹ The important fact then in connection with instinct is the elementary unity of the primitive active and affective functions; what at bottom is actually found is an undifferentiated active-affective spontaneity, and the different 'instincts' are growth modifications of this unity, and are properly classified only by a reference to the objects to which they relate. The classifications are possible only because of an analysis that stops short of sufficient thoroughness. The obverse error is represented by Bergson, who celebrates in myth the elemental biological unity of life functions.

There is, however, one factor in Professor Dewey's doctrine which, as and if I understand it, is very much less fortunate. The insistence on the intelligent character of habit, as emphasizing the executive and 'going' feature in its make-up, suggests in fresh and sharp terms a restatement of the doctrine that the real is a developing unity, and that the motive factor in the real is what in its developed stages would

¹ *Fundamentals of Psychology*, New York, 1922, chapters VI and VII.

be called thought. So far, so good. The difficulty comes from what seems to be an attempt to make the doctrine square with natural science presuppositions, particularly those of biological science. And this leads him perilously near the simplification fallacy. One could wish that Dewey might frankly say that his point of departure is always the organism; it certainly appears to be always some sort of biological consideration, with a preference perhaps for the psychophysical organism considered, perhaps, as a system of active habit. The emphasis on habit and instinct leaves the impression that he has always in mind the image of the physical body as fulcral base with some social or public result as objective, the two mediated by the complex of functional relations which as habit and instinct make up what is by naturalistic theories called mind. The assimilation of means to end in the general doctrine of instrumentalism seems to imply a similar image. And the emphasis on process in considerations of method, together with the reference to executive traits in connection with the regulative aspects of experience, seems to indicate a conception of biological dynamics. If such a conception could be held inspired with the element of intelligence which he is at such pains to connect organically with habit, then there would be little objection to it even by those who have hitherto been obsessed with the idea of 'reason.' It could be accepted as a more or less satisfactory bringing together of 'mind' and 'body' and would thus do away with a good deal of the futility of the type of epistemology which an unreal problem creates. And yet the epistemological problem may persist precisely because of the tendency of certain types of thought to attempt to simplify to one or the other of its terms.¹ And, just as the 'idealist' has courted subjectivism by continued preoccupation with 'mind' in its internal and unique aspects, so a philosophy based upon a scientific biological conception is in danger of running into a sort of subjectivism of the organism, one that takes too seriously the external and separate and objective aspect of mind as functions of an organism conceived as specialized out of relation to its species or universal.

¹ And the tendency will persist just as long as the terms are taken over from biology or are fashioned out of peculiar mental elements conceived upon the analogy to physical structures. The dependence upon biology may therefore be nothing more than a materialism rendered somewhat plausible by an emphasis upon dynamic and evolutionary considerations.

Organic subjectivism seems an awkward phrase. But there appears to be a fallacy corresponding to the psychological subjectivism which looks for the simple in mind, and this fallacy seems to be exemplified in Dewey's biological presuppositions. The emphasis on habit and the other specifically organic traits seems to set off and specialize the organism out of its ground connection with the life of ideas and values in pretty much the same way that the neglect of these organic traits for pure ideal values severs and abstracts mind from its ground connection with the organism. It is the 'situation' that is real; the whole; this is the premise from which all speculation must start. But the criterion of the situation, or its symbol, or whatever is needed to keep the presupposed whole alive and active, does not seem to be habit or instinct as the simple objective expression of a specific or specializing trait of the whole. This is Prof. Dewey's hardest problem, to universalize habit; and it is doubtful whether it can be done. For particularity is inherent in the nature of habit, or rather, is the nature of habit. Habit is vague; and its vagueness is alone enough to convict it of final reference outside itself to 'unity.' It does not have, and cannot have, its meaning in itself; consequently it can furnish no ground of meaning for social order. It will remain vague just as long as it is conceived as the mediating link between organism and environment, for the reason that organism-environment is only one term of the relation which lays the basis for universality and real objectivity. The organism-environment situation presupposes a subjective point of view. The problem is, not of the relation of organism to environment, but of the relation of organism-environment on one side and the objectively universal on the other. The real situation here is the *whole of life of the species* which is the logical locus for the organism-environment complex. Severance from this whole is what is meant by subjective. The neglect of one term within the situation will lead inevitably to the simplification which runs amuck in the attempt to find real positive quality as specificative of abstract identity. The attempt cuts the ground from under its own feet. But the reply would probably be that this is giving a too narrow interpretation to environment; environment, it may be said, means not-organism; all that may be in any view set over against the organism as a possible object of its 'reaction.' But even this argument

assumes that a part of the environment of the organism is other organisms. Besides, it severs the situation into a one-at-a-time series of repetitive simples. Nothing shows this so forcibly as the exaggerated importance which the mere abstract 'reaction' gets in social psychology. And with the appeal to the reaction and the other clap-trap of 'social psychology' we are back again to the assumption of atomic disparateness.

VI. CRITICISM OF CURRENT SOCIAL THEORY

Habit, then, as the precipitate form of the characteristic reactions of the organism, even though made dynamic and 'executive,' does not deliver us from the eternal particular. As dynamic and executive, habit becomes a plurality of particular moments within an abstract process. It can give therefore no basis for human order in its practical aspects, for it furnishes no suggestion of principle which is constitutive in a logical way of that order. It is, however, once we drop the appeal to anthropomorphism, suggestive of further realms of fact that are more hopeful. The precipitate of characteristic types of social relations or reactions, which is the reality of which specialized habit is the scientific symbol, is to be found in the institutions through which is expressed the culture of individuated life. Institution, then, is the universal within which habit, as a form of reaction of the organism, becomes synthesized *with other elements* into the principle or law of social order. It is the constitutive or constitutional law which comprehends the specific elements of habit within a situation or whole as ground; and in the absence of this conception of ground no explanation of habit is possible. It certainly is not possible to find the essence of habit by analyzing a particular instance of habit to the point where intelligence must be assumed as one of its "parts." Intelligence does enter at this point, but it is the intelligence of the analyzer functioning as a law of logical order. It appears as objective to the instance of habit being analyzed, but is not analyzed factually out of it. Analysis can only find the essence of habit to consist in the form of its synthetic relationships within the whole (species) to which it refers and in which it is found as fact. The social implications are here best illustrated by a reference to the relation of the common law to constitutional law. In a

particular instance involving common law relations, these relations are constitutional to the instance taken as a particular, but this would be meaningless were it not for the reference of the instance and its law to the whole body of constitutional principles which represents the universal as established order. Habit, also, has its meaning outside itself. But as objectified social purpose or as universalized social habit, institution is only half described. To these environmental aspects of the 'situation' there must be added the 'organic' and personal aspects also as represented in individual ends and purposes. Keep the situation complicated or it will simplify into unreality. The concrete totality of this complex of social-environmental and organic-individual elements is first and last the institution. And the only social psychology worth a fig is the critical detailed analysis of institutionalized human purposes, and not a classification of instincts. But as such no social psychology exists or is required; this function is fulfilled by social philosophy, or politics. Never will a social psychology be dug out of the depths of human nature as found in the psychological individual; this is the constructionist fallacy, the assumption that a whole is explained by a descriptive summary of its parts. Nor can a social psychology be formulated out of habitual reactions as abstracted from the individual or from a plurality of individuals. Habit is lost world without end in the isolation of the organism. Social reality is not a question of scientific cause and effect, nor of habit and instinct or what can be made out of habit and instinct, but one of logical ground and consequent.

Professor Dewey's significance then lies, as it seems to me, neither in his minute analysis of the nature of habit and instinct, nor in any idea of a social order which he may attempt to construct out of these elements. It is the concept of the whole of life, the nature of the 'situation' within which details of fact come to specific and universal meaning, that is really important. It is this endeavor to state the nature of habit and instinct as a function of the system of life as a whole which finds in habit the constitutive law of social order. Habit is in this sense not individualized but individuated as the principle of social unity. But to inject into the connotation of habit and instinct the generalized conception of law does, as has been already said, violence to more serious matters than

mere language. To call that habit which serves to give principle to the natural order of human relations is to describe more than there is in the facts to which the term normally refers. Habit in the accepted sense is the constructive element in a mechanical system which merely maintains itself through repetition. It expresses no purpose and approaches no end. It is not a means to an end since it *means* no end. It is therefore not whole. It is process. Its nearest approach to significance lies in the fact that it negatively suggests ends in the sense of limits. But limits distinguish; they do not characterize. What is required in social theory is not the element of social structure but the principle of social constitution. Not the *technical* principle which tells how to proceed if you want to make a society out of non-social elements, but the *diagnostic* principle which enables you to understand society as an order already constituted in nature. As seen in terms of its elements social life can merely be repeated in its mechanical or organic aspects; as understood it can be reproduced or reconstituted. In the one case its 'law' is infinite process and its essential or specific character that of conflict and struggle; in the other the principle is that of growth and reproduction, the constitutional *law* of life and reality. It is not the detail of fact, but the entail of fact, the meaning of fact in the large that is required. But this Professor Dewey does not seem interested to discuss.

Constructive social thought is therefore turning from the meticulous concern with multiplicity of data with their modes of aggregation, to an attempt to envisage in the large and on the whole the principle of constitution of an order that is itself and as a whole accepted as the datum. This is the meaning of Aristotle's demand that the state should not be so large that the governors cannot comprehend it as a whole in one view. In so far as such a view makes use of the causal principle it is the cause as logical ground that is intended. Cause in the scientific sense is the principle of method which governs the manipulation of detail with reference to an ultimate abstract quantitative form of things. This form of things, in spite of the fact that it is derived from process, congeals its appropriate matter into unbending fixity, and reports what that matter from the beginning eternally was. It is the dis-

ease of *stasis* inherent in the matter. On the other hand, the ground of social fact is the primitive concept of society, not the concept of 'primitive society.' It is society conceived as a vast field of opportunity where specific human relations find their unity of purpose in the reproductive growth of the whole. It is then the human order that is the datum, the Fact. The problem of principle is to understand the law of the constitution of that fact, in the theoretic sense. The practical interest is to learn what elements of real principle condescend to the particular relations of facts. But the point of departure for the problem in both its aspects is a view of the whole.

VII. THE ATTEMPT TO UNIVERSALIZE INSTINCT

It is the attempt to see human relations writ large that gives a very real import of promise to Williams' "Principles of Social Psychology."¹ This book represents an endeavor to account for the elements of meaning in social life by interpreting them in the light of the major human conflicts, as for example, the racial, national, industrial, professional, etc. The work is fundamental in that these conflicts are regarded not as mere magnified interpersonal frictions, nor as the friction that arises between two persons seeking the same end considered as extended indefinitely by the increase of the number of persons involved. Conflict is conceived as an impact of the masses of thought and feeling attitudes that are characteristic of classes considered as wholes. The conflicts are then between impersonal or superpersonal orders, which, as interpreted in terms of social interests, enables the author to attempt an objective view of society that is not hampered by the twist in judgment which personal interest invariably creates. It is becoming increasingly clear that the weakness indicated above as inherent in sociological method can be avoided only by a more comprehensive view of the subject matter of the science. And it has become common to indicate the shortcomings of politics when regarded as a science as the tendency to a piddling exhaustiveness of treatment of detail. The appearance therefore of a thorough-going effort to re-

¹ James Mickel Williams, *Principles of Social Psychology*, New York, 1922.

conquest the total objective meaning of the field of practical relations is hopeful for the future of the sciences which work in that field.

But unfortunately Williams' book does not stand close scrutiny. The splendid promise expressed in the statement of the general point of view is hardly fulfilled in the discussion of specific problems. It is with disappointment that the reader finds the main motive throughout the text that of adapting supposed "dispositions" to the facts of social life. It is on this point not superior to the older types of instinct psychology represented by McDougall. The attitude of objectivity is not maintained, and the book turns out to be another collection of 'material' with classifications on the basis of presupposed 'dispositions.' It is time for sociology to leave off its search for facts and to begin to ask what some of the facts mean. When this question is raised seriously it will be found that the merely descriptive function of psychology, whether individual or social, has next to nothing to contribute to the understanding of social life. Indeed, the only thing it has contributed so far has been to put the investigation of social fact off the track of interpretation and onto that of classification. The outstanding example of this false attitude is found in the instinct psychology which is made the basis of modern practical science in ethics and politics. It is an open question as to whether the correction of this psychological fallacy would not eliminate sociology from the field of sciences of human nature. Sociology, with its mania for facts, may be nothing but a false ethical and political method set up as a science on its own account following after the model of a perverted psychology. Once more, the criticism of the instinct psychology is all that this most hopeful of sociological efforts calls for, since the bad psychology is not avoided by referring to the presupposed psychic elements as dispositions rather than as instincts. And it is equally futile to attempt to describe the dispositions as social so long as they are conceived after the model of individual dispositions. It is once more a case of the fallacy of explaining reality in terms of individual differences, which assumes that individuality *is* difference. It is not difference that is real but differences.

So the whole method that rests upon description of instincts (and the change to the term dispositions does not help) is

false. At best it could pin its faith to *instinct*. If there is any one unambiguous thing that instinct means it is the reference to the unity of mind in its lower manifestations. Classifications of 'instincts' merely represent confusion of thought. The laborious lists of McDougall *et al.* are hopeless, and their futility is proved with a vengeance in the questionable interpretations of human nature which make up the content of "The Group Mind." Instinct means that in the accomplishment of institutional and social ends or purposes through individuated forms as instruments the psycho-physical organism functions as a whole. There is no special predominance of an element in the situation, not even do the 'psychic' elements have any special importance as against the physical. There is in fact no element that can be singled out as important in any peculiar way, and there is not observable in the operation of any 'instinct' anything like a one-to-one correspondence between 'psychic traits' and objective events. The whole classificatory motive with reference to instincts is simply a projective reference to observed events, and the 'lists' are references to what are taken as characteristic phases in physical processes. This means that instincts are gratuitous creations necessitated by the method employed to describe outer facts; they are hypotheses and not data, as Professor Faris has shown. There are, then, no instincts. The element of fact that is responsible for the multiplication of classifications is that the activities of the organism which have an evolutionary background in the species are uniform in serial detail, and are determined to uniformity not as habituated 'reaction' to environment, but by the influence of the ends of the organism's life as a whole.¹ These activities therefore show no special connection with the particular needs of the organism, and are specific activities only in the sense that it is the life of the species which gives them unity in a plane above and outside that of the individual's life. They are evidences of the functioning of the universal in the activities of the individual, and as such are responsible for the directive tendencies in the life

¹ This doctrine of the influence of the whole upon the part seems to be pretty well established in biology. Cf. Ritter's *The Unity of the Organism*, and Loeb, *The Organism as a Whole*. The philosophical aspects of the problem are well stated by Driesch, *The Problem of Individuality*, London, 1914, and *The Science and Philosophy of the Organism*, London, 1908, and by Haldane, *Mechanism, Life and Personality*, New York, 1923.

of the individual toward the life purposes of the species. Professor Dewey's "executive" traits therefore look at the facts from the wrong end. They are often conscious activities in the sense that the active individual is conscious of the *processes* through which they are carried out; and they are purposive in that they relate in definite ways to the ends of the species. But they are not consciously purposive since they do not in the actor's mind identify his individual purposes with the purposes which he fulfills in the life of the whole. This effect must await the constructions of the higher life of intelligence. When such activities become consciously purposive for the individual actor they become aware of their relation to his ends as the species in which they are realized; and the unity of means and end become conscious in the life of the individual constitutes the self-consciousness—the principle of individuation for those forms of life that are rational or governed by ideal ends. When such activities become aware of the identity between their unity as an individuated whole considered as means and their unity of purpose with other individualities in the species considered as end, they become moral beings, beings individuated by a principle of unity which lies outside of or is objective to their life-content. They then participate in the universal, and the meaning of their life is outside of and beyond the particularity of detail which is the proper sphere of descriptive science. They are thus beyond the reach of psychology. That is, the sphere of detail as the proper field for the principle of causation gives no insight into the nature of real principle except such as is suggested through its own limitation. But the function of limitation is regulative and negative, is never constitutional, and is statable only in the form of an infinite judgment. Thus cause exhausts its meaning in infinite process. But as a participant in the universal, instinctive activity becomes consciously purposive and points beyond cause to ground, thus determining the original datum of social experience as the moral unity of individuals in institution. The unity of such institutions is the constitutional law of social and rational human order; and this idea of order is the principle of ground which gives to instinct whatever meaning it may have. This ground is the datum for the science of society. And as such it is the principle of explanation for the detail of social relations. But as such it indicates a procedure

much more significant if more difficult than collecting data and classifying instincts.

VIII. LOGICAL DIFFICULTIES OF SOCIOLOGICAL METHOD

The socialized mind is not the human mind. If any further proof were necessary it would be sufficient only to refer to the favorite concept of the earlier sociologists—the primitive mind. This is the idea of the simple in its thinnest form, and the enormous amount of effort expended upon it shows clearly the point of view represented by the search for the simple. In human affairs it is, as Aristotle said long ago, the complete or ‘perfect’ form of a thing that is its nature; not what the thing was, but what it *may be* is the index to what it eternally is. And this is the element of ideality which must vivify any account of habit and instinct that is to be significant for a conception of social facts. It means that habit and instinct are abstract and partial elements, to be understood only in the completed whole that defines their nature with reference to total ends. They therefore, as they are, explain nothing, but are themselves explained by the system of fact which is at once the environment and the environed center of active energy in the individual life. This system of fact is institution. Nor is the ideal or universal element of fact a deferred or as yet unrealized temporal event. That is the fallacy of interpreting history and evolution longitudinally. It assumes distinctness as the principle of relation among facts, the setting of facts together in linear series without breadth or meaning. It thus forgets that series of fact intersect, that a given fact occupies position in a number of series at the same time. And this means that no specific quality can give the nature of fact its full meaning, however abstract and general it may be. The individual who occupies a place in, e. g., the economic connection, also is a politician and a church member, a member of a golf club and the father of a family. He is not these in the abstract, or by mere classification, but a grocer and democrat, a Methodist, a member of the Jonesville Golf Club, the husband of Sarah Jones and the father of X, Y and Z Joneses. And yet, while he *is* specifically all these, it is not the specific situation as distinct locus that makes him the man he is, which, in a word, individuates him, but the total of all these relations

not as combined or integrated, but as synthesized through the qualification of each of the relations by each of the rest, the harmonic relational system which, operating as universal, determines the identity of the man with his locus in the whole.

The difficulty here is, by a slight change of point of view, illustrated by the tendency to interpret history on the analogy of natural causation. And life, either as individual or social, is history. This tendency tacitly assumes a causal or productive capacity as the essence of time. It is the common notion that to name the temporal antecedents of a fact is to explain the fact, to state its full nature; as if any fact were a repetition of a preceding fact with perhaps slight changes due to environment together with change in quantitative locus. But different environmental conditions themselves, it is assumed, can each be referred to its antecedent, so it is only antecedence which makes a difference, and the difference made is only the antecedent fact recurring with a new numerical status. Then history 'repeats itself;' it is merely the fact that events may be given different numerical or ordinal positions. But time *alone* produces nothing; makes no difference; by itself it conditions no fact. It is only as time is complicated with other relations of fact that it has a meaning. As abstract, it is, as Kant said, infinite. The conditions of the reality of a fact are many and varied, and involve complications of quality into the nature of which time gives no insight. The given fact is the consequent (in the logical sense) of a total complex comprising an infinity of variety, the limits of which are defined for ordinary scientific purposes by the point of view which designates the science within the field of which the fact falls, and for logical purposes is limited only by the absolute. Time alone is therefore not a sufficient criterion of reality, nor is history when thought of as the whole of time. But history is a whole of logic; then the historical explanation of a fact is the whole of reality which conditions it. But in this statement we are already beyond time, and are referring fact to its ground in that universal which is specified or referred to its universal by the quality of the fact. The ground of the facts of human relations is then the universal as the ordered or individuated personality of institution. The logical ground of the individual person is the system of institutions with reference to which as universal he is determined as particular. A thing individual-

ized by itself and through itself, all of whose differences refer to its own inner abstract unity, and which expresses itself through uniqueness, is nothing. But as individuated through its mutuality of relationships with other things qualitatively similar to itself it is identified with its species and thus becomes the particular realized in its universal. And as individuated again through its proximate species with other things dissimilar in positive quality it identifies with a wider whole in a more largely generalized type, an individuality of greater qualitative scope. Thus the serial degrees of reality as individuality. This is the meaning of real series; when real the relation in series is cumulative; when abstract it is repetitive. As real it is progressive development, where development does not refer to the thin and narrow conditionedness by time alone but to the spread and sweep of qualitative inclusiveness. Thus the primitive mind, the 'historic' mind, the causally determined mind, the mind as repetitive series, the integrated mind, the collective or group mind, in brief the socialized mind is not the human mind. It is an abstract and formal exsection of the real life-mind. It therefore contributes nothing to the understanding of human relations. The difficulty in all these sociological attempts is not a question of facts; it is not, as sociologists seem to think, all because they have not as yet succeeded in finding all the facts, and much less that they have not found a magical key-fact. Indeed the very tendency of many writers toward rhetoric and platitude itself indicates that the Spencian fact-finding institution has fulfilled whatever purpose it may ever have had. The difficulty is a logical one. But if the difficulty is once 'isolated' what is to be the remedy? It is encouraging to note that the recognition that no adequate social science exists, and that none is possible on a basis of the presuppositions of strict science, is becoming more or less general.

Thus it does not appear that much is to be expected in the way of a contribution to the logic of human relations by those interests which seem to have pre-empted the term social. Sociology and social psychology have said what they have to say and the pronouncement is not convincing. For a long period of human history religion more or less worthily carried the responsibilities of human order and organization, and there are still those who postulate a constructive capacity in

religion. But such persons seem to neglect that religion is essentially an interpretation of human values *in terms of already accomplished goods taken as standards*; it is therefore essentially conservative rather than creative, and salvation in its view is a mere salvaging process. It presupposes as the element of principle in human experience a type of spastic feeling; but feeling has no essential relation to principle. Hence society under the influence of religion cannot manifest the order and stability which are the results of immanent indwelling law.

IX. SUMMARY.

Briefly, the theory of social relations, when it undertakes to be strictly scientific, seems to rest upon some one of the following grounds, or upon a more or less indefinite mixture of them all. It does not seem that any of them, or even all of them taken in such combinations as they are capable of on scientific presuppositions, are sufficient for a logical basis of the facts of human relations.

1. The most common of types of explanation of social relations seems to rest upon the *causal concept*. To this we have raised objections which seem to hold good of any of the various senses in which the concept of cause is interpreted or used. (a) In the first place, the idea of cause as operative in social relations carries the implication of productive agent, which may be conceived either as unitary or monistic total force in the world conceived as a mechanical whole; or, cause may be interpreted pluralistically, in which case the result is a very great multiplication and pluralization of agencies corresponding to the separate observable social processes. This conception of a plurality of agencies usually bases its social theory upon a social psychology in which a separate "instinct" is discoverable for each characteristic social phenomenon. (b) Cause may on the other hand be conceived as abstract quantitative process, the emphasis being not upon its productive capacity but upon the assumed entitative character of movement. This idea of cause is capable of being endowed with (x) a certain anthropomorphic aspect, as when movement is assumed as inevitably tending in fixed directions, although no specific end is conceived of the process. There is a certain

validity for this point of view derivable from the concept of procedure in law. (y) Or, again, as abstract process, there is the idea of pure mechanical recurrence, or the idea that reality completes itself in cyclical copies of a fixed type. This motive becomes prominent in social theory in the form of the unit of repetition, and is the ground of such theories as integration and combination, and such conceptions as that of group (in its technical sense), collectivity, etc. The limitations of all of these have been pointed out.

2. As perhaps a variation of the causal concept, the idea of *origins* is prominent in social theory. This concept means in its general aspects two things which are not commonly distinguished, perhaps not often recognized as different. (1) It may refer to an ultimate point from which a given phenomenon issues. It is of course merely the demand that the movement of thought in going back to causes must come to rest somewhere. This has two forms: (a) The point of issue may be an exalted and remote particular, the purpose being to reduce the multiplicity of fact to standardization in a type-fact. This is instanced in the reference of earlier sociological theory to the "primitive savage," or in the "economic man" of economic and political theory. The older "state of nature" and "natural law" are also references to a point of issue as exemplified in a perfect specimen or type-fact. (b) Or the point of issue may be regarded as a generalized form, or what modern logical theory attempts to formulate in the notion of the concrete universal. In its commoner aspects this has been the historical explanatory category of religion. This conception has been the ground of the very interesting idea of creation, an idea which has found a place in modern evolutionary science. It is vastly more significant for social theory than has yet appeared. (2) Again, the conception of origin may imply that a phenomenon may issue from out a vague universal "history," that the phenomenon may arise from nowhere in particular, but merely 'occurs' or 'emerges' as an epiphenomenon with no statable relation to the world of real phenomena. This point of view is likely to find acceptance most readily by a social theory which rests upon esthetic rather than anthropological facts, and its scientific standing is doubtful. But it may (a) become extremely valuable when given definiteness of form in "historical method," and has made its contribution to social

philosophy through the application of the historical method to political and legal phenomena; (b) it has also contributed suggestiveness in the form of the more speculative aspects of the doctrine of evolution. It is an open question as to whether evolutionary theory can apply to the facts of human life in the absence of the assumption of a cumulative or creative aspect in the process of history. (3) Another category of all social theory has been that of an isolable unit-fact, as internal and self-referent unity. This differs from both the ideas of cause and origin in its mode of reference. It has just been pointed out that both cause and origin imply *source*, the one primarily as producer and the other primarily as conditioner. The unit-fact on the other hand implies a mode of reference in its superposition upon given facts as a test-pattern or model, and is characteristically a product of thought when employing its formal or symbolical function. There are two phases of the nature of the unit-fact as symbol. (1) The unit-fact as used in scientific procedure is the standardized particular employed as a mechanical pattern. As opposed to the remote and exalted particular of the theory of origins, it is the present and commonplace and interchangeable fact. It is what we have called the repetitive unit. The utter indifference of its nature is demonstrated in the scientific methodological abstraction of the "datum," or in the generalized non-present datum which in purely theoretical concerns is called the "atom." In social theory the unit-fact has given us our 'scientific' analyses of human nature into bundles of "desires" or "wants" or "urges," and the construction of "society" upon a pattern of a sheer mechanical composition of forces. In law and politics it has given us the idea of the state as wielder of authority and sovereignty. The unit is then either an (a) infinitely repeatable atom, (b) or infinitely duplicatable datum. (2) The unit-fact is also conceived in certain types of social theory as the ultimate "simple" of order or organization. It is with this conception, together with (4) below, that real contact is made with the real living forces of personal and social life. It is the theory of corporate organization, to which the following chapters are devoted. The final reference here is always to the universal as individuated. (4) This last point suggests the type of social theory which rests upon the category of *ends*. Of this form of speculation it is to be said that

while it is consistent with scientific method and principle and fulfills all scientific requirements, yet it goes beyond the ordinary purposes of science into a critical and transcendental analysis of the system of universals upon which the structure of social order rests. Its fundamental assumption is that of existent ends present in social reality to the speculative insight, and describable in terms of the speculative constructions of logical theory. It therefore shows two forms. (1) In the one case the strict logical construction of the forms of the social order has produced the splendid series of historical Utopias, and thus kept alive and vigorous in men's minds the Idea of the perfect Order of Persons as the ultimate End. This ideal represents the abstract demand for Law and Order in human affairs, with little or no critical inquiry as to what either means. This motive has served as the plan-image for the constitution of all actual states after the growth of the state in size surpassed the possibilities of executive comprehension by the single monarch. Its last and greatest actuality is the representative federation (a) as a social system, in which the universals involved as constitution are principles of geographic distribution; and (b) a system in which constitutional principles are processes differentiated by group and class interests and general functional relations. The former of these types of social constitution has recently passed out of existence, giving place to the latter which now prevails throughout the civilized world. It is the form of the social order constructed altogether on the impulse to pure theory, and is characterized by the dogmatism and self assurance which disdains correction by experimentation. (2) Just as abstract *order* has been the directive concept in the formation of mechanical states, such as the prevailing political and economic constitutions, so the idea of concrete *organization* becomes the ultimate practical concept dictated by the requirements of logic realized in actual experiment. Thus the consistently scientific social theory will follow modern biological theory in the definition of its essential concepts, and will accept the idea of organization to replace the older notions of cause and origin, which are anthropomorphic. This idea of organization will be represented in two phases. (a) The one, based on the strictly descriptive and 'natural' aspects of scientific method, will give us the pure functional organization depicted in the science of anthropol-

ogy. Here 'sociology' may be of some service in showing to what extent mere scientific law can carry the descriptive analysis of social fact. (b) In the other case, the concept of organization must be expanded so as to embrace the scientific and factual aspects of life together with the value systems of life in a single synoptic constitutional principle. It is the function of this type of social theory to make clear the form and meaning of such a synthetic principle, and to that end the constructive portions of this book are dedicated. Our purpose then is to lay out the general lines of function and meaning of the constitutional social principle of corporate organization. The essence of the social order will here appear as the idea of the ordered continuity of the institutions of man with the constitution of things.

CHAPTER III

THE INDIVIDUALIZED MIND AND THE PERSON

So far our discussion has been primarily concerned with the methods and attitudes of thought and logical categories commonly used to describe the mind of man as found in those groups which have formed naturally about such facts as custom and habit. But these methodological considerations may be taken as fairly accurate descriptions of the habituated or custom-bound mind, or in any case the degree of accuracy may be accepted as final for ordinary purposes and as high as in the average of scientific results. Then the account of mind as determined by causation and by a historical development conceived in terms of abstract time; of a mind isolated and complete in itself except insofar as aggregated with other minds; of a mind which is negative and resistant and dispersive primarily; in short, of a mechanical mind, this account is essentially true.

It can further be said of any mind which produces none or few of the elements of culture, that the sociological account is the literally true one—of the pre-cultural stage of human life. But what shows no essentially cultural quality is of course not yet human. And since the caudo-temporal mind is provided in advance with its relations to other minds and other things by a necessitated and rigid law, i. e. imitation, etc., no questions of its order or organization can properly arise. There are for such a mind as yet no social relations, no such a thing as significant order. It is only by a figure of speech that we may speak of the organization of a machine, since there is and must be presupposed something other than the machine to furnish a point of reference or criterion for judgments which make reference to its structure and relations. In other words, the machine, as Aristotle would say, is not "independent." Nor can there be any question of social or culturally objective

organization of such minds, whose status and relations are "given" once for all in the rigid medium of custom. The only recognizable synthesis which such a mind could assume for itself among the plurality of other such minds would be one suggested by "imitation," and this, as we have seen, strips its terms of everything except their serial and statistical places in an abstract continuity. But this is merely another statement of cause; so there seems no way out of contradictions so long as we subject human relations to cause.

There is in fact no way out. The "social" mind is a mind in no practically real sense of the term at all. So long as we remain on the ground of social law, conceived especially upon the analogy to natural law, no practical, i. e., political, ethical, legal, etc., relations are possible, for the reason that our mechanical principles have precluded any organizability within the realm of mind. Then such a mind is not a person but an artificial if useful methodological abstraction, useful for a theory which says to us: "How simple it would be if you could get minds free from their multiform differences and their endless complexity of interrelations." It would be in this case easy to generalize. And this is what descriptive purposes require. But an interpretative purpose has to learn that when minds are thus severed from their organic connections with the system of minds they are no longer, strictly speaking, the minds of persons. And that means that description is never fully true to its facts. The social mind, the mind of prevalent social theory, is not a person, it raises no questions of individuality, and has only a limited meaning for any of the fundamental practical interests. Not being individuated, the social mind is only a partial truth, necessary and useful in a technical sense and so far as it goes, but stopping short of the point where it might give fruitful suggestions about the organization of human life. As unindividuated, it lacks the eschatological element of "independence" which, as Aristotle says, marks the perfection of its nature.

The series of attempts of thought to arrive at an adequate concept of individuality constitutes the logic of human history; and the partial failure of each has probably been due to the demand to make specific and distinct within each stage the full expression of the principle upon which individuation rests. And while the requirement of distinctness is real, the specific

character can only be represented fully by allocating it within the synthesis of relationships which makes up the whole of life. This can perhaps best be done by attempting to describe the principle of individuality in the variety of functional forms in which in the course of experience it has appeared. This attempt is here undertaken. Assuming that the schematic and logical aspects of individuality have been adequately formulated,¹ we may here seek an interpretation in terms of content in the practical and regulative interests which have been responsible for its development.

I. THE GREEK ORIGIN OF INDIVIDUALITY

Bradley has remarked (*Ethical Studies*, N. Y., 1911, p. 150) that "a discussion that would go to the bottom of the question, 'What is an individual?' is certainly wanted." He goes on to say that if he should attempt it he would not have much to say that has not been said before, but has not been attended to. It would be presumptuous perhaps to attempt a definition of individuality after all that has been written; and yet some sort of distinction between the doctrine of individuality and what is popularly called individualism seems even more badly wanted at present than perhaps at any previous time. Definitions of Individuality commonly take a metaphysical turn, the motive appearing to be to arrive at its principle by abstract deductive methods, whereas it would seem more useful to discover a definition from a study of the practical interests in which it characteristically expresses itself, namely, such interests as economics, politics, ethics, and law. It may be useful to give some thought to a brief account of the development of the idea of individuality since the first complete synthesis of its elements which represents the content and significance of ancient civilization. And for the purposes of western thought development begins with the Greeks. It is a commonly accepted fact that the genius of the Greek race reached its highest point of development under the closest harmony with its natural environment, and that it perhaps reached this point before it had become self-consciously aware of the distinction between its "mind" and its environment. The Greek race

¹ In such works as those of Bosanquet and others. For the author's point of view see the *Philosophical Review*, XXX, 6, pp. 566-584.

felt itself a part of the great whole of nature, and since it had not yet developed interests which would require a distinction between what was "Greek" or human, and what was nature, there was no occasion for its setting itself off from nature. Nature seemed to the Greek merely felt as the immediate and undifferentiated entirety of his experiences, immediate in the sense that he was not aware of it as distinct from himself, but further in the sense that nature *was* himself become immediate in the process of awareness. The fact seems to be that the Greek reached a high degree of civilization before he became aware that what was Greek or vaguely human had become differentiated in his mind into separate clans or personalities. The state of affairs can hardly be put into language, for the reason that language seems to presuppose distinctions which the Greek had not yet made, and would have no occasion to make until his wider association with other peoples forced upon his mind some as yet unexperienced fact. Thus Parmenides' "It is" seems to indicate a lack of full comprehension of the multiplicity of fact, although it is probable that he is giving expression to what was traditionally the attitude of all Greece, and that his own reflective temper had been forced back upon the traditional attitude after all his means of investigation of particulars had been exhausted. At any rate there is no reason to believe that Parmenides had or needed any clear or definite or specific sense of a mind as distinguishable from other facts in nature. For him, situations are all general; or would be, and he could call them such, if the distinction between particular and general had been made and developed into a meaning. But he is using words perhaps primarily to express a wholeness which has never been apprehended in its various details. Even in the case of Anaxagoras there is serious doubt as to whether he comprehended anything more in the "nous" than the notion of primary stuff which had been the problem for the preceding philosophers. At any rate the qualities which he gives to the "nous" appear to be attempts to describe the vague general and expansive impressions which come to experience through undifferentiated sense perception.

When the Greek realizes the necessity for distinguishing himself among known reals he will attribute to himself all of the generalized characters which he has learned in experience.

The self appears to him then as a whole of experience just because that is the character of his every experience. His lack of a developed analytic power of distinction has prevented him from being confused with important details, and his experience is not yet specialized to the point of giving exaggerated importance to specific characters. The same character of wholeness is attributed to things as they become important to the Greek mind. Sooner or later his religious activities separate out of the complex of unrecognized details of his life, and he gives to that experience the character of wholeness which by later development becomes the all-embracing or all-representative god. This is evident from his first speculative problem—that concerning the “stuff” of the universe. And the attempt to identify the stuff with earth, air, etc., is probably not an effort to generalize upon a particular experience, but rather the interpretation of a particular which has somehow become important by the only meaning he knows, the vague and nebulous totality of sense feeling which appears in every perceptive experience.

This vague feeling of wholeness is the notion which Socrates and Plato and Aristotle refined and developed into the idea of the personality. This conception, or feeling, once given permanence in experience through memory, and as such more or less detached from the immediacy of present awareness, becomes the permanent and dependable as *nature*. Out of reflection upon ‘nature’ both the state and the gods become differentiated within the vague general impression derived from contacts in group action in the law courts and in war and in such other functions as had called for unconscious united effort. So long as the whole of experiences thus conditioned had resulted in a relative satisfaction, reflective attention was not called to the state or to the gods, just as any state or any religious system is tolerated while practical experience is more or less satisfactory. These contacts developed friction between the part as the particular experience and the whole, and the reflective statement of the problem thus occasioned would necessitate the more or less clear definition of the whole as ‘state.’ The state is thus recognized as the *status* of the sum of life conditions, the *locus* of the problem which calls for solution. And this illustrates the general political truth that few of the facts which we describe as political are con-

nected immediately with reflective experience except in the case of the mind trained in the field of such problems.

But the delimitation of the state within the whole complex of experience and as the vague synthesis of experiences is at the same time also the process by which the unique nature of the personality is revealed, and it is within this process of distinction also that the first or original qualitative character of the personality is to be found. The early Greek could for a long time blame the gods, as an aspect of the objective status, for his misfortunes, and could, if necessary, exchange his gods for others more sensitive to human needs. And it is to be observed that such would be the logical and proper attitude while their relations to each other and the laws of their association were merely external and 'social.' But he was soon to see that *he himself* was in some way concerned in his own destiny, just as he had discovered the gods by making distinctions within the primitive whole. He discovered himself, in his peculiar quality of will, then, in the discovery that he could by taking thought modify the gods or the state, and his response to the new power discovered in himself developed into the sense of responsibility. This is the essence of personality; obligation. But the problem indicated here is one that was taken very seriously in its reflective form only as late as Aristotle, who labors very long and hard between the conservative idea that the state is 'natural' and thus fatalistically determined when it is 'right,' and the progressive or experimental idea that man could and sometimes should recreate the state through revolution. The 'naturalness' of the state, while to Aristotle the reflectively demonstrated truth that the state is the *status* of the elements and conditions of human nature, is to the ordinary citizen, perhaps because of the part which his feelings play in the formation of the attitude, something more firmly grounded in what does not represent the frailties of human nature. But the moment it was realized that the *status* or constitution of things depended in part upon the action of the citizen (as would be emphasized in the call to duty in war or the law courts before even individuality was clearly felt), then the individual discovered *himself* in the tie which bound him to the whole of what appeared to him as real. He thus recognizes his individuality through his identity with the

universal. The necessity to defend the state is now no longer the fatalistic urge of mere blind 'social' feeling, which it is in the case of the socialized mind; but the necessity which is seen to hinge upon the preservation of all those elements of satisfaction which, at the same time that obligation is being learned, are being incorporated into the idea of 'good.' The necessity is therefore a rational necessity, implying choice, which is freedom, or obligation. Law then becomes rational as a constituent element of a recognized whole.

This is the essential meaning of the interest which dominated the Greece of the Periclean age in determining the objective form of perfection for politics, art, religion, and philosophy. It was a search for the universal and objective truth of individuality, objective in the real sense as implying connections within the whole. But to say that they were interested in the subjective destinies of themselves considered as isolated and unique 'individuals' is totally to miss the meaning of Greek civilization, and to retroject into the life of the Greeks the very element of weakness of modern life which has made so much of a mess of the state. The Greek would not have understood the 'uniqueness' and distinctness of individualism. The Greek sculptor was interested to create the form of the human being in an undifferentiated harmony of beauty of body and character. Such distinctions as that of body from soul were as unknown to the Greek as were all the other redemptive clap-trap of a later age.

The meaning of the personality for the Greek, then, was the obligatory tie which bound him to his objective self in the 'nature' which embodied his purposes in final harmony. This marks the highest point ever reached by human reflection, if the results of reflection can be gauged by the objective perfection of ultimately satisfying ends reached by it. But when by hard necessities of historic fact the objective ends of the Greeks were destroyed, the total effect of this collapse of the objective machinery of the state was responsible for a change in the conception of personality, which was accomplished or gradually attained during the Hellenic-Roman period, or what for our purposes we may designate as the period of the crisis of religions.

II. THE RELIGIOUS DEVELOPMENT OF INDIVIDUALITY

The extension of the areas of war, the expansion of commercial activity, the general flux of peoples, the advancement of knowledge with reference to the geographic world, the improvement in the means to commerce—all these served to demonstrate the *administrative* inadequacy of the existing state. The immediate subjective effect is best seen in the morbid hopelessness that is to be observed in the electricism, scepticism and pessimistic religiosity which characterized the philosophic activity of the period. The defection of the gods which came with a widening of experience had liberated large areas of hitherto restrained desire, while the collapse of the state left no usable instrument for the determination of the legitimate ends of desire, nor any criterion for judging among desires. This, of course, finally got formulated as an ethical problem, as distinct from its political origin, as it naturally as a standing unanswered question would, in the positive and negative pleasure theories of the Epicureans and the Stoics, which were satisfactory perhaps to the cultured few. But for the political mass of people the situation left nothing but bewilderment, which, the moment the interest of curiosity failed it, realized the uncertainty and danger in not knowing the precise nature of their moorings. This feeling of uncertainty and detachedness, this 'fall of man,' was perhaps responsible for the loss of his essential self-respect which was a function of his consciousness of uninity with nature, and which is the essence of his personality. Nature has lost her dependableness, the state no longer protects with guaranties; the gods have been pushed aside by fact, and destiny which was once joyful now appears to threaten; the tie which held man tethered to his end snaps, and he is left with no recourse; there is no longer harmony between himself and nature. It is then in this situation that he 'falls'—gives vent to the most pathetic and mistaken wail which his history records: What must *I* do to be saved? This outburst was perhaps not a question; not an attempt rationally to formulate a problem. But it was merely a discovery of the fact of discord between the immediacy of experience and the imaged completion of experience in the form of an end as the completion of the life of desire. And, since the nature of the end was not clearly

grasped or understood, there having been developed no form of unity between the subjective life and the larger scheme of fact presented by the changes enumerated above, the reaction to the situation was that which ordinarily follows from a state of ignorance—fear smothered in hope. And fear once more throws the weight of emphasis upon feeling, with the customary result that imagination, instead of following the idealizing tendency to a reconstruction of the state of fact, turns attention to the inner and subjective and immediate. Instead of referring to the rational problem of reconstituting 'nature' with reference to ends, as had previously been the constructive genius of the Greeks, the mind of the time lost itself in a mystical and futile 'searching of heart.' In other words the center of interest was transferred from the objective and general purpose to 'see life whole' in the form of unity of detail of fact, to the immediacy of subjective and particularized feeling, and the 'soul' of religion was born. By some such process as this the idea of the self became identified with a mass of vaguely unsatisfactory subjective states, and as feelings do not submit to law, cannot be generalized, the personality gets identified once for all with what is private and exclusive and inner and 'metaphysical.' This idea of the self lost in the struggle with the Greek-Christian objective idea of self during the middle ages, but finally triumphed with the Reformation and modern individualism. With this development religion and philosophy became distinct interests, even while the problems of philosophy all have reference to religious values; and theology becomes the method of scientific thought as well as the magic which is to be sufficient unto salvation.

Individuality thus comes to mean a mass of inner, private, exclusive feelings centered about their own intensity. The problem of salvation, which in its ethical-political form is the generalized meaning of all the problems of human life, is so stated as to assume that the method of its solution necessarily involves mystery and magic. Its solution will be due to finding the inner essence of the mass of feeling. It therefore invests the conception of individuality with corresponding mystical qualities, and thus puts the conception beyond the sphere of adequate description. It thus assumes 'dignity' and 'worth.' But the problem would not so easily down, and the 'plan of

salvation,' which it was found through critical pressure from the remnants of Greek philosophy necessary to give some definiteness of form, raised anew and in a deliberately conscious form all the questions of the nature of the soul. But, under the presuppositions of 'inwardness' which dominated the religious attitude, *the problem of personality became the psychological question of which among its 'inner' aspects was the soul's ultimate 'simple.'* Under the pressure of modified Greek philosophy, which still persisted in certain quarters, theology was compelled to abandon the cruder elements of mysticism and magic for a more rational method, and the problem of the nature of personality as a psychological problem began as early as Augustine to be discussed and more or less clearly formulated as reason *vs.* will.

But by this time the effect of the subjective tendency began to appear in the simplification and pluralization of the personality, due to the shifting of emphasis among details of the soul's inner feeling-quality. The soul thus individuated through feeling takes the character of undifferentiated homogeneity which is the essence of feeling; it is the essence of feeling to be indistinguishable from the immediacy of its quality, which is responsible perhaps for the attribution of mystical values to it by religion. Little is to be known of its quality just because there is little in it that is knowably distinct, and what is not well known becomes of peculiar importance to those motives of experience which will not wait for patient analysis. And we have here again the fact that indistinguishableness in fact leads to simplification and pluralization in method, and the indefinite repetition which comes to grief in abstraction in the numerical infinite. And the numerical infinite, as a whole of repetition, since by the nature of the case that repetition can never reach a whole, is a contradiction in terms. The motive of religion under the influence of these ideas became the indefinite extension of the application of the plan of salvation, which was conceived in numerical terms, to all men everywhere, the idea that by a one-at-a-time magical regeneration of individuals 'all' might eventually be saved. The whole result here is the consequence of the effort to define the soul in terms of the privacy and exclusiveness of its predominant feeling quality. And this meant of course that all the unimportant qualities should be 'purged' away, *the individual being*

defined by what was left of him after the concrete detail of fact is by distinction eliminated from his nature. It is curious that, with the intention to find the reality of the individual in terms of one of its own significant details, there was adopted the method of negatively eliminating details one after another until there is no quality left, only the empty abstraction of 'simple and undecomposable unity.' But through this process religion, in whose hands during this period the destinies of the individual lay, was once for all committed to 'individualism' and atomism, and this gave rise to what perhaps was its most difficult problem of all.

For, perhaps once more under the pressure from philosophic thought operating as the ideal of a complete harmony and whole of ends, the question persists as to what can be the relations among souls so defined. The ultimate objective, which had not disappeared and never can disappear entirely from man's mind, however it may be obscured by his more immediate and pressing interests, is the *state or status of life as the order of souls*. And it is the memory of 'good old times' as periods of constructively satisfying experience, of periods of effort when a full and adequate outlet for native energies gave richness and fulness of quality to a total harmony of life, which establishes the center of man's purposes in an ideal *status* of man. Utopia is therefore inherent in the nature of mind. But the search for the state was abandoned by the church in its more or less unconscious acceptance of the Roman Empire as its appropriate form. And it is the successive series of failures to maintain the actual state that is responsible for the eschatological hope which defers the real state to an undesignated future, and although futile is the effort at construction of the state out of what is not already a state, yet the effort was made to build a state out of individual atoms agglomeratively held together by the cement of their magical inner quality, in total disregard of the principle that the constitution of the state is the *state which is to be realized*. The essence of state-theory is Utopianism—and the one quality of man's 'nature' which corresponds to the essence of the real is the faith in 'last' or objective things which directs his eyes outward from the cave of his 'individuality.' This is the element of principle with which Greek philosophy kept defeating and refuting the blind mysticism of feeling which threat-

ened by its oriental fatalism and pessimism to sink the young religious movements in the confusion of subjectivism. But far more significant for the future form of social order than these philosophical expressions were the mass attitudes and social contagions which furnished the medium within which the newer religious movements were developing. The significance of the religious developments consisted in the fact that they were movements of the whole subjectively material *body* of civilization, representing the totality of cultural effects and agencies and institutions that had been precipitated from the 'glory that was Greece.' But the precipitations took the form of subjective mass tendencies, leaving the fine objective form of Greek civilization with little direct connection with the new spirit. They are therefore weighted with the futilities and errors as well as stimulated with the successes and ideals of the brilliant past. And it is the balance of these different general cultural motives of a given age which creates constructively formative or 'causative' principles and effects for succeeding ages. They are at the same time the stuff and the idea, the material and the energy, which gives to cultural history its continuity. And it is these same factually generalized social totals of accumulated culture which furnish the formative environment of the vast average mass of mankind, as well as the idealizing and projecting method of the trained theorist. And it is to be remembered that it is both of these 'classes,' whose functions are not after all so clearly delimited from each other as we are sometimes inclined to assume, which makes up the individuality which gives to social or organized life its rational value and its creative purpose.

The question of individualities as independent reals whose content is ultimate worth and dignity derived from the cultural accomplishments of past ages, then, raises the question always as to ultimate relations. And as the problem appears now, it is the question of the possibility of relatedness among ultimates, since individuality has become the assumption of entities which are complete in themselves without the necessity of relations going beyond their own privacy. And the question of relations always raises the question of order and organization, and thus leads to the constructions of the theorist. It is from this that the constructions of neo-Platonism on the one side and of the theologians on the other, have their signi-

ficance for the development of the idea of personality. The explanation of individuality on a basis of its inner content separates it from other individualities with a chasm that cannot easily be bridged. Thus the social theory of the period is approaching self-contradiction. The emphasis upon its uniqueness, which seems necessary to clothe it with the value and dignity which makes it a thing of permanent and stable worth, renders the question of its organic wholeness with the social body one of extreme difficulty. And it is this wholeness and unity of the saints in a system of objectively realized persons in the Kingdom of God, as the philosophic ideal of wholeness of order, which constituted the central problem for the development of theology throughout the whole of the earlier period of Christian thought. The problem got some degree of formulation from Augustine on, and reached its fullest expression perhaps in the discussions which arose in connection with the principle of individuation, a principle which, as we shall see, finally got with St. Thomas what is perhaps its final formulation. The same question in a more generalized and consistent metaphysical form gave systematic character to the thought of Plotinus. The rigid and sharp distinctness of the value content given to the concept of individuality in both systems effected a total separation between individuals. As was said above, this seemed necessary in order to invest the individual with ultimate worth; that the individual might be envisaged in its fulness of independent reality, all connections with what might detract from its integral purity must be severed. This is the ground of the negative character which Christianity displayed in its anxiety to *avoid* contamination with the evils of the world, the flesh, and the devil. It is also responsible for the 'unsocial' nature of the major Christian virtues, which led its devotees to the extreme of withdrawal from active participation in the affairs of ordinary life; and, finally, for the conception which sooner or later came to be general and dominant, that the prime duty of the Christian was to 'get away' or escape from every obstacle which tended to prevent his saving his own soul. The world of grace in its idealized purity is just by virtue of its purity wholly different from, and therefore entirely disconnected from the world of nature. The world of grace is therefore objectless, and as the symbol of the value of the individuality, becomes a subjective

abstraction, since nature which is the only possible objective end of individuality, is denied reality. Nature is, then, bad, evil, imperfect, and is to be 'put off.' The subjectivization of the individuality is now complete and final.

But the physical dependence of man upon nature, which could not by any magic be entirely neglected, imported into the nature of man just the evil and imperfection which characterized nature on the whole, since the collapse of institutional life, as the latter had become identified with nature. And the exalted purity which was attributed to God, as the ultimate individuality, severed all connection between him and nature. God and man are therefore totally different, are separated by infinite distances, by virtue of the very qualities which distinguish each. It is strange that the fact that the same assumptions would make men equally remote from each other did not occur to the theorist. The problem of salvation then becomes one of how the two necessary constituents of the religious experience, human weakness and divine omniscience, can be synthesized into a satisfying whole; or, in the terms of the philosophy of history which became the method of approach to the problem, how can the plan of salvation explain and make consistent the eternal tendency of man to fall away from God with the reverse processes of grace by which man is restored to unity with God? How can the fallen man be lifted up to his original uprightness? How can there be postulated at the same time an original unity of man with God in the face of his effectual and actual separateness from him? The religious answer was of course the *tour de force* God-Man. It is for that reason of no theoretical consequence. The theological answer was the 'plan' of salvation worked out in the form of a philosophy of history. With neither of these are we here directly concerned. But there is a psychological conception of the nature of personality and a metaphysical conception of a corresponding universe involved in the situation which are fundamental for the understanding of the practical characters which were attributed to the individual in the political, ethical, and legal theory formulated later and which furnish the core of meaning to the concept of the individual of the present time. The assumptions from which the thought sets out are, once more, the isolated imperfect man and the isolated perfect God. Under these conceptions

what can salvation, as the idea of a universal and final synthesis in a perfected Individuality mean, and by what methods can it be accomplished?

In its larger outline, and such is sufficient to define its central conceptions, the thought of the time upon these questions is capable of brief statement. What is postulated as individuality is a self-inclosed, self-sufficing, qualitatively homogeneous, isolated unity. This latter is the term used. But it is to be noticed that unity in any real sense is just what the conception does not mean. That is clear enough, in connection with the conception of God, from the prevalent 'negative theology.' And it is clear also in the case of man in that man's reality is to be achieved by stripping off or getting rid of the qualities which characterize him as a natural being. But since a negative quality is a psychological impossibility and a contradiction logically, the negative motive leads to a process of 'distinction without difference' within the essential *nature* of God and man. But distinctions which represent no real qualitative differences are abstract, are therefore numerical. They are distinctions which define only through the otherness which separates or disperses things. Then, in the case of God, another being is created which, still being non-qualitative in that its only character is otherness from God, differs from God only in its numerical distinctness. But its *quantum* can be reduced without involving its distinctionlessness. It can therefore be repeated indefinitely in the pure theological theory at no expense to its qualitative value and dignity which are assumed for it in terms of feeling and we have a plurality of gods or 'beings' extending from the demi-urge to "a little lower than the angels," the system of intermediaries or mediators in the Plotinian philosophy and in the hierarchy of the old Catholic Church. By a similar process of simplification with pluralization of causes together with the mechanical principal of association, it was possible to begin at the other end—man—and build up, by quantitative repetitions which do not disturb qualities that make *real* differences, in the opposite direction simply by the mathematical device of increase of quantity. Then by repetition an indefinite series of beings which mount from the lowly plane of man by insensible (abstract quantitative) gradations to the throne of God are easily conceived. The stalactite which falls by drops from the

heavens meets eventually with the upward reaching stalagmite which grows in indefiniteness by accretion indefinitely. And the column of individuality thus formed reflects a mystifying and saving radiance simply because of the twilight of the cave.

Individuality is thus once and for all defined in terms of isolated uniqueness or unvariegated homogeneity; and a plan is devised by which to explain away its logical weakness and its unfortunate practical consequences. And like the Ptolemaic theory of the heavens, this abstract doctrine of individuality explained satisfactorily a great mass of fact which persistently called for explanation. But what was not observed for a long time, and is only imperfectly perceived even now, was that, like the Ptolemaic theory, it explained its related facts in spite of and possibly because of its own weakness and mistakenness of principle. The theory got its plausibility from the fact that it falsified the facts, and the falsification of the facts was made necessary by wrong assumption of principle upon which the theory rested. Given abstract homogeneous identity, or 'unity' to which all the worth and values of life are assumed to adhere, there is no escape from the adoption of mystical feeling as the organ and criterion of knowledge, except through the doubtful and precarious attempt to perpetuate the feeling by repetition through numerical extension, i. e. by stimulating the feeling's intensity. It is for this reason that hedonism in ethics is the inevitable issue of individualism in politics and economics. This assimilation of the 'philosophy of identity' with atomistic pluralism will seem strange to some minds. But the empty identity is the black night for all philosophies—for Democritus no less than for Plato, for Hume no less than for Hegel. For abstract identity and abstract distinction or difference come out at the same place, and it makes no difference from which we start, it makes no difference whether the abstract absolute is the microcosm or the macrocosm. Not distinction, but the things distinguished or distinguishable; not identity, but the things identified or identifiable; not fixity or substance postulated, but qualities attributed or attributable; not abstract active tendency, but deeds acted or 'actionable'—these are the facts which call upon each generation for system and order. And because facts are essentially not fixed but fluent, the ever recurring problem which man faces is to re-

order the world of his past with constructive, i. e., imaginative, reference to the ideated future. We must also learn how *not* to confuse the reality with the methodological device by means of which it is known and ordered. The mistake here is in the neglect of the essential complexity of human affairs, and the variety of manifestations of motive.

It is within the welter of real variety in modern political, economic and legal fact that the problem of individuality presents such enormous difficulties. And the only hope in the situation seems to me to lie in the willingness with which modern man will undertake to assess the facts of practical relations as reflected against the historical background which has been imperfectly sketched above, and with forward reference to the ideal of a logically perfected individuality. The task is a difficult one, but the degree of adequacy to which a solution is made to attain is the measure of the significance of the culture which is to make or mar the future. Let us look at the individual as he appears in the essentials of modern political, ethical, and legal theory.

III. INDIVIDUALITY AS A MODERN PRACTICAL CONCEPTION

Such, in brief, is the genesis of the significance which was given to the term individuality at the beginning of the modern period. Individuality is an abstract mathematical form whose content is supplied by the more primitive stuff of the elemental feelings—a bit of negative homogeneity hallowed by adoration. It becomes easily the metaphysical *one* of the natural rights period and later the economic and political ‘man’ of the utilitarian period. It is simple and homogeneous in structure, yet an infinite given whole of causal effectiveness and power for action. Its metaphysical status is guaranteed by the recognition which must be shown it from every other atom of the universe, it is the absolute basis thus of all “right,” and its “rights” are to be maintained against all the world. It is simple, its substance is knowable immediately to every other, and homogeneous in that its qualitylessness is fixed independently of the instance in which its distinctionlessness inheres. It can thus be repeated indefinitely, and the laws of its nature are enumeration and statistics. Each has the right to infinite expression, in so far as his action does not interfere with like

freedom of others. The idea of the individuality is a clotted mass of contradictions.

It has been suggested above that the fundamental human interest is primarily always centred in that *status* of his total relations to his world which makes up the environment within which man's particular ends are to be accomplished. And since the most immediately necessary and therefore most insistent of those relations, if not the most important, are those which form the foundation of his existence as an organism, his primary interests are the political, considered as including the economic. One may regard the economic as included within the political, without thereby committing oneself to the "economic interpretation of history," and also without giving to the economic relations a too 'ideal' interpretation. Aristotle has once and for all given economic relations and the goods that correspond to them their proper status when he calls them the 'indispensables.' And to imply with reference to the economically indispensable goods that they are "low" or at least not so worthy as the goods of the spirit, is merely to show the influence of the old Christian attitude of contempt and disdain of the things of the world. It leaves the individual standing with one foot in this, and the other foot in the 'other' world. The vast accomplishment of the modern period was made possible precisely because of the abandonment of just that view of the separation of the material from the spiritual, and by an approach (which, unfortunately, was not maintained) to the original Greek attitude of unconscious identification of the two worlds. This is the idea or rather the attitude of mind which was responsible for the awakening of the scientific spirit in the Renaissance, the spirit of disinterested inquiry into the facts of life, whatever might or might not be their spiritual value, which resulted in the discoveries of Galileo, Copernicus, Bruno, and the rest. As opposed to the old church view, nature became a thing of interest; first, perhaps as an object of beauty, and later as an object simply of the disinterested curiosity which lays the foundation for science and philosophy. The old church conception of individuality as a purely spiritual 'soul' could not face the new facts of nationality and extended commerce, of a reinterpretation of Aristotle by the new German mind, for which the orientalism of early and medieval Christianity had been little more than a

thin veneer, however genuine their 'conversion' to Christianity may be supposed to have been. The refined and exsiccated soul which was the result of the process of the plan of salvation became a thin and colorless abstraction, bearing little resemblance to the complex of hungers and thirsts, of sex desires and the greed of wealth and love of display and sense of physical strength and sensible harmony which the Germanic peoples felt as the essence of their lives. Moreover, when the young Westerner learned to think, having been to school to the ancients in the Aristotelianism and Platonism of church theology, the thin-drawn arguments of the old intellectual system seemed peculiarly dried out and dead when brought into contact with the pulsing life which he saw around him. The new man of the period becomes therefore the natural or 'economic' man, in the sense at least of recognizing the real necessity of the Aristotelian 'indispensable' and preferring it to the 'higher' spiritual and intellectual values of the Church.

The point of view, therefore, of the sciences of life, as these sciences became formulated, was determined with reference to the immediately felt detail of content of human nature; if for no other reason, for the simple one that the young modern was more adept at perceiving than at thinking. The tendency to particularize on a basis of concrete experiences then became formulated into the method of scientific procedure, and the modern logic of induction as the basis of the 'empirical' philosophy was well on its way. The negativity of the procedure as formulated in methods of elimination, which is its central characteristic, came by various suggestions from Bacon to J. S. Mill. And along with the concern with the particular experience, and perhaps because of it and under the influence of religious feeling, went the tendency to inwardness and the abstraction of the concrete inner experience into a self-subsistent entity. Each specific inner fact became important on its own account and was worthy of its own place in the descriptive system. Thus was born what developed into empirical psychology, and the epistemologies of the 17th and 18th centuries, which, along with the new inductive logic, all presuppose the ultimateness and absoluteness of the 'distinguishable' single mental state, which was modeled after the self-sufficient unity of religious experience. This tendency is characteristic also of the ethical treatises which for two cen-

turies were little more than descriptions of those inner feelings which are concomitant to the kinds of actions that customarily get approval. And in the contemporary attempts at metaphysics, e. g. in Spinoza, the tendency was universalized in the principle that the order and connection of ideas corresponds to the order and connection of things. This principle, from the naturalistic point of view, was developed later by the eclectic and sceptical encyclopedic movement, which seemed to establish once for all the general injunction to get all the facts, with the idea that for each fact there exists a corresponding state of mind. The final issue is, of course, positivism; and sociology. But in these "objective sciences" even, the tendency is toward the emphasis on the subjective.

The point of immediate practical interest then, which became the point of departure for scientific and philosophical interpretation, was the psycho-biological human being with his matter-of-fact and common-place interests in making a living and raising a family and winning a place of respectability in the local group where his lot happened to be cast. An example of this type of interest is well described in Adam Smith's "Moral Sentiments," Part VI. As compared with the lofty spiritualized individual of the religious thought of the time and earlier, the conception seemed gross and crude, and for a time the conflict between the 'worldly' and the spiritual threatened to become serious, the complete rout of the 'spiritual' in its traditional form being accomplished with the acceptance of the results of the industrial revolution and of the modern doctrine of evolution. But the new naturalistic conception was the one which had always been the native attitude of Western peoples, and as a consequence, its triumph over the oriental was complete. And in this very triumph the adaptive genius of the Western mind showed itself in one of the most interesting *coups* in the history of mind: it convinced itself completely that the new Christian attitude had been accepted and adopted as identical with its own, and thus permitted itself to hold its Greek or Barbarian substance under the cloak of Christian forms. Then the mystical spiritual soul, which had been taught to the West as the standard and criterion of all value, was easily identifiable with the original Western standard—the natural man interpreted in terms of primitive feeling.

IV. THE ECONOMIC INDIVIDUAL

It is not the purpose here to combat the "economic man" or to attempt to show in what particular details the conception is faulty from the point of view of a consistent economic theory. That, I suppose, is easy enough; in fact it has become the fashion to perform the feat and then announce that economic theory is nonsense. But the conception is of a type that cannot be refuted by any arguments based upon the interpretation of detail of fact, nor can it be successfully met by showing that there are other qualities of the real individual not comprehended by the term, even though the additional suggested qualities are verifiable as positive and demonstrably essential to the nature of the individual. The conception is not an idea, but an Idea; not a clearly defined outline of form filled with experimental quality which may be designated, but an attitude that is constitutional to thought and therefore organic with human nature. Specific arguments with reference to its content thus fail to strike its vital parts; for to meet such an argument its content could be changed in such a way as to make it consistent with *any* verifiable descriptive statement. For this reason, then, so far as content is concerned, the conception is adequate and there are no objections that can shake it. The trouble with the economic man is not as to his psychological content. The economic man is *psychologically* therefore a fact. But for these very reasons the conception is false as an idea. For no idea is ever exhaustible in the matter of content. The content of an idea never can be fully known, otherwise the idea would lose its dynamic tendency and become a fixed and abstract form. The growth of the idea implies the continuous realization of varying content under a universal form. Defined in terms of distinguishable content merely, it of necessity takes finally the negative form of isolation and homogeneity, and therefore fails to embrace the *possible* quality which is essential to a regulative conception as the attitude that governs the method of a science. In simpler words, the economic man is a narrowly defined complex of qualities abstracted from the totality to which they belong and from which they derive their meaning—the whole of human nature. The conception is simply too small—too restricted to satisfy the expansive and anticipatory require-

ments of a human interest. The economic man as an attempt to define man in terms of content, as we have seen, isolates and makes particular and subjective the idea to which it is applied. The economic man, then, as an isolable group of wants and the activities determined by these wants, is not a man, not a human being in the full meaning of the term. It is not distinguishable from the isolated and 'saved' soul of religion except in that the detail of content in the one case is conceived as 'spiritual' and in the other economic and material, while both are equally 'inner' and abstract and subjective. The meaning of an idea is not determined by its content, the sort of matter which happens to fall within the synthesis of its act; but by its 'intent,' what it tends toward universally by the rule of its nature; or, by its *portent*, what of possible meaning an indicated situation may have through relation to the present actual.

The economic man, then, is a reality and can be described accurately and with each particular of detail. The psychologists have demonstrated that. But it is not a human being. It is a methodological device set up by a defined purpose to render the process of description more simple and easy. The economic man is real, as the man of 'indispensables,' as the man of physical wants and of technical activities calculated to satisfy those wants. But these relations, as specific and technical situations, are not of the stuff of which ideas are made. They have therefore no value whatever for social theory. Their ultimate stuff is the organic reflex or tropism of biological theory, the methodological particular, the ultimate logical 'simple.' The latest arguments in behalf of the economic man put emphasis on biological phenomena, as does its corresponding philosophy, the philosophy of technique, pragmatism. These biological relations are the over-simplified elements within an idea, elements negatively determined by the regulative attitude which controls the direction of thought, but as such they are merely symbolical of the aim which is the stuff of the attitude. It is the attitude, then, as objectively symbolized through its reference to the specified detail of content, which is real. It is this attitude which portentously indicates the detail of specific and technical fact which gives meaning to the situation. But the specific and technical detail represent what only existentially is. The instrumental

character of the situation then leads dispersively to simple detail, and is an instance of the negative emphasis which falls upon the lines which run between real situations and separate them into subjective abstractions. The instrumental or technical emphasis then seems to miss the real objective determinants of individual situations, by substituting for the older reference to states of mind a reference to conditions of or within the organism; and this, as we have seen, leads to the 'subjectivism of the organism' with the resulting emphasis on the specific integralness of 'reactions' or 'complexes of reactions.' But a reaction thus considered comes to its end at the skin of the organism, or rather in the muscular or glandular systems, and thus makes no connections with the environmental counterpart, except technical connections as the setting of conditions for another reaction. They are thus materialized, but not objectified. The consequence is another case of infinite process. It therefore falls short, dissipates itself within its own organic boundaries, never comes to individuated objective maturity. Without reference, therefore, to the non-organic (if organic is to refer only to the natural or physical organism) but organized and institutionalized fabric of the external world considered as the natural precipitate of organic evolution molded into meaningful form by universal or 'social' ends, the concept of the individual will remain the isolated and homogeneous unique abstraction represented by the economic man, in spite of the biological arguments for it. It is the materialist, after all, who is in constant danger of subjectivity. The 'economic man,' then, as not being an individuality in any form that can be given it, has no suggestions to offer concerning a possible order of social relations. The conception has therefore no political significance whatever, since it can be made the basis of no human organization.

V. THE ETHICAL INDIVIDUAL

If we turn to the ethical ideas which are to be found within the ensemble of attitudes underlying modern thought, the same preponderant 'individualism' is met with. All the ideas in this field represent more or less consciously a definite presupposition as to the nature of man as individual. In fact, the question of individuality gets some degree of clearness of

expression in this field. The nature of the moral agent is one of the perplexities which moral theory has had to concern itself with all along, consequently it will not be necessary to discuss it in great detail, since what has been clearly formulated is already sufficiently criticized in ethical literature. As in the cases of the religious unit of salvation and the scientific-economic man already described, most and perhaps all ethical theories attempt to find the essence of the moral individuality in the content of an isolated or isolable life. Self-sufficiency and independence in some sense seem to be the main idea in all ethical theories of individuality. But the nature of the qualitative content of ethical fact in distinction from economic or biological fact made necessary some new types of distinction which should be set out as clearly as possible. The object-matter of ethics is, as all agree, just the mass of inner human attitudes together with their expression in action which furnish the basis for the concepts of character and conduct. Consequently the lead toward inert nature is not so strong as in economics, and, where contact with nature is made necessary, the theory in the main adopts the negative attitude to nature made universal by the religious development. This latter point will appear to be somewhat hard to carry in connection with the hedonist theories, yet I think the case can be made out that the end of any pleasure theory, which is of necessity based upon some form of empirical psychology, is pessimism, which justifies itself by attributing to nature essential badness and unreality. All ethical theory, therefore, since it deals primarily with values as individualized in terms of concrete lives, is necessarily individualistic since its criterion of ethical reality is some inner "state of mind," and the more general forms of fallacy in ethical reasoning will then be due to conceptions of individuality which are mistaken in their reference to fact and in their interpretation of the inter-references among facts. That is, the theories fail generally in reaching substantive objectivity.

For our purposes, we may accept as the most far-reaching distinction among types of ethical theory that which classifies them as rational or empirical. The distinction seems to turn on the very point of subjectivity, in that the empirical view has been developed largely as a critical reaction against the abstractness into which the rationalist view is prone to fall.

But it meets abstractness with abstractness, that is, it meets the subjective inner reference to the 'reason' with a reference equally narrowly restricted to sense. In both the criterion of moral reality is an isolated inner "experience."

As has been said, all ethical theories are in the end theories as to the nature of individuality; and all ethical theories have shown their weaknesses, as systematic references to reality, most openly in their tendency to 'individualism.' Individualism seems then the peculiar nemesis of ethics, the strange result that, in seeking unity of life, we find invariably plurality of lives. Then the plurality is assumed somehow to be real, and for better or worse must be incorporated into the individuality which is to be representative of the real. The two types of ethical theory seem either to represent two distinct types of mind or two distinct elementary points of view which cannot be harmonized. And this indicates that both are partial and incomplete. But I think it can be shown that representatives of both points of view have been quite generally affected with the content fallacy, and that the mode of practical life toward which each of them tends is at variance fundamentally with its corresponding theory and demands something better than the theory. And, since an ethical theory is intended to be the form of a practical life, the contradiction between the end which a theory consciously intends and the end which it practically tends to attain, if it can be demonstrated, is a final disproof of the theory. This contradiction can be shown, I think, to vitiate any ethical theory that accepts the presuppositions of individualism.

The rationalist point of view seems to have conceived of the essence of individuality in terms of 'mind,' either as 'reason,' 'intuition,' 'conscience,' or some other terms which refer directly to the inner realities of psychological experience. It of course objects to a reference to mind in 'merely' psychological terms. But whatever the term used the reference seems always to the same reality, the essence of which is its inwardness. The rationalist's most difficult problem then is how to demonstrate the 'objectivity' or 'objective validity' of moral judgments as the satisfaction of the demand for inner logical consistency, and for authoritativeness of moral command, and as furnishing a basis of meaning for obligation, in terms of the acts which express the original inner states. Or,

to put the matter simply, the difficulty for the rationalist is how to get out of his own inwardness and make connections with the world within which the life of the inner spirit is to be maintained, and still hold to the idea of the absolute dignity of the isolable "mind."¹

The standing criticism of rationalism on this point is perhaps in part justified; that it makes contact with the world of fact by forcible identification of the objective world with the forms of the inner reason. This identification attempts to avoid an absolute state of non-difference by regarding the outward as a result of the creative causal efficiency of the inner, the objectification of the reason through logic, and to avoid the temporally real and thus limited historical characters of causal relations by interpreting the relation as one of ground and consequent. But by this device rationalism incurs the charge of fixity of the real, the 'block-universe,' and this it either justifies on the basis of the doctrine of the relativity of motion which it develops to logical importance, or explains with the rhetoric of the dynamic character of the whole as consistent with the necessitated fixity of the parts. That is, the reference of the part within the whole may very well be fixed absolutely in a purposive way relatively to the whole, and as itself unfree contribute to the self-sufficing completeness or independence of the whole, i. e., to its freedom as a corporate entity. This in its bald statement has seemed nonsense to certain types of mind; but it has succeeded in stating and defining more or less clearly the central difficulty of contemporary thought, that as to the *constitution* of individuality and the *principle* which governs the distinction of its various forms. And in so far as ethical theory must be stated in psychological terms, this statement is probably final.

It is difficult, however, for the rationalist to remain on this high logical ground, and in his references to the particular facts of psychological experience he is perhaps less fortunate. That is, he throws his position open to severe criticism when he undertakes to consider moral experience in its detail. But the rationalist point of view can still be more or less ade-

¹ This problem of the objectivity of the reason has taken two forms, in the one reason is objectified through the processes of history (as including evolutionary conceptions); in the other objectification is sought through the processes of logic. And identification of these two has been attempted recently.

quately stated by reference to the psychological analysis of human nature upon which it depends. From this point of view it finds the essence of individuality in 'reason,' consciousness, conscience, intuition, etc., and our problem is to find the meaning of these terms within the type of life to which any term that is chosen is supposed to give form. That is, it is within the practical implications of the theory that its real meaning is to be found. The ethics of rationalism therefore presupposes a type of life as individuality which we must examine.

In the first place, there may be noticed the two extensions of the term reason which have been made basic to the theory in its different connections. In the one case the tendency is to rarify and refine reason to the point where any possibility of relational contact with other propensities of life seems to be denied. In the other, reason is somehow the synthesis of life processes in history. In the first, objectivity is sought through universalized refined dignity and a self-sufficiency of worth in immediate fact. The religious motives which developed the most concise if the most abstract conceptions of God as person were prevailingly rationalistic. Their notion of God is attained by denying him first this, then that capacity and character, until nothing but pure undifferentiated being remained, and this seemed convertible with all such terms as dignity, worth, reality, knowledge, etc. The reason then, it seems, is, as individual, the negatively determined absolute; and is approached through the logical method of residues. For the theory, this is a convenient result and it has in many cases been worked very hard. It is the old-curiosity-shop theory of the absolute applied to the knowledge process or aspect of nature, the device which permits of explaining any difficult question by referring it to the absolute knowledge, where and by which it is somehow known even though it may not be known or knowable in any finite or human relation. Such an argument is of course of little cogency, whatever may be its formal validity, except in so far as it is interpreted as an analysis of the knowing process as universal. As an ethical argument, it is an *argumentum ad verecundiam*, the reference of the question to the type of mind which is capable of knowing such things.

Again, the reason in this narrow sense has been identified with other conscious functions than the rationalizing thought

considered as the process of mediating within the realm of fact. Its creative or imaginative capacity has been stressed by certain interests, the issue of this conception being to identify reason with cause as the efficient or productive force which brings things into being. The individuality as thought or reason in this sense is the creator, the dynamic and effectual point of origin for real things. In this case the explanation of a thing is a reference to the ultimate power which brought it into existence, a statement of how or by what agency the thing 'got made.' The more difficult the question at issue, the more ultimate and remote the individuality which is its explanation. The conception ignores of course the fact that a question of ultimate origins is a contradiction in terms if it is intelligible at all, and the tendency is the same as that indicated (Ch. II) in connection with a certain aspect of scientific thought—that is, a tendency to mysticism and magic. A cause is conceived that is so ultimate that nothing more ultimate could be, and as such of course is the proper subject of adulation. And at this point the 'appeal to reason' has involved itself in contradiction and petered out in its opposite.

Again, the narrow subjective determination of reason in another connection takes the form in which the reason is identified with the passive awareness of psychological experience. Perhaps the best illustration of this is the immediatist knowledge claimed for morality and religion in the form of intuition. But this is once more a case of the oversimplified ultimate of which anything may be true just because nothing is true. The mere presence in mind of a given feeling or any other state is no guarantee of the reality or objectivity which claims to correspond with it, as was demonstrated in the criticism of Descartes' *cogito*. An interesting form of what seems to be the same thing is more recent in the 'socializing' of the religious experience. Anything which may happen to come into mind through the association of persons in religious activity becomes invested with 'reality,' and thus the mantle of sacredness and reality is thrown over the most diverse forms of group feeling. This is another instance of the subjectivism which rests on particularization, an instance of the sociological type where the particular takes the quantitative form as "group," and the criticism of it is indicated in the reflection that *anything can come into the mind*. The point, of course,

is, what *other* guaranties of validity besides presence in mind has a given idea or feeling? And it is a final answer that if there are no other grounds of validity than mere presence in awareness the state of mind is not objectified. The result in ethics of such a conception is the ethics of conscience, or intention, or good will, considered as pure spontaneity, and as not requiring any connection with results or with previous experience. And, as has been observed, all these ethical conceptions are open to the charge of defining individuality in terms of the particular aspects of the person considered as unique. And the objective counterpart of the unique personality is an abstract metaphysical world stripped of its variety to the point of sheer undifferentiated homogeneity, the numerical particular of repetitive process, which of its own nature drives the mind on to its other in the conception of other-worldliness. The *individuum* cannot be the end of the experience process, even while its finality is presupposed in its definition.

VI. THE INDIVIDUAL AS CONSCIOUS

A more subtle form of the same psychological theory of awareness is much more difficult. It is at least as old as Aristotle, and in its later forms is a statement in subjectively psychological terms of the old doctrine that through the evolution of reason which comes from conscious cultivation the individuality is to be attained. It is the didactic or reformative account of the reason which comes from giving the process of rational growth an educative function and end. From this point of view the individuality is to be attained by application and effort, not negatively by getting rid of its excrescences as in the system of Christian thought, but positively through the development from within of an ordered system within which the individuality finds its logical ground and support. It implies for the process of knowledge a reflexive function, as is indicated in what is perhaps its best rhetorical expression, the proposition that the individual can *know himself real, free*, etc., that is, through expansion of knowledge the individuality is self-created. The profounder form of this idea is the underlying principle of the Stoic philosophy, and some element of it is discoverable in nearly all forms of philosophic thought

since. And, to show how interesting combinations of contraries may be, it is not impossible to show traces of the idea as elements in conceptions from the point of view of which the individuality as rational growth process is a pure product of natural causation, as in the curious case of the scientist who accepts the traditional religious presuppositions. From this point of view, then, the reality, existence, value, dignity, etc., of the individuality is a matter of the significance of its own knowledge process. An interesting instance of this notion is to be found in Professor Fite's "Individualism."¹ Here the principle is stated to the effect that it is *insofar as the individual is conscious that he has rights, is free, etc.*, degree of consciousness being the principle of individuality (p. 67). And Professor Fite makes a very wide and legitimate application of the theory, giving it, as I understand it, as an analogy to the broadening of significance of ideas which comes with the expansion of the mental field of vision. And a further extension of the idea makes possible what seems to me the valid method of interpreting the significance and influence of personalities by the test of breadth of view and variety of interests, a notion which seems essentially sound, especially when the "breadth of view" is shown to comprise situations of objective fact, and not mere states of mind. The definition of intelligence in terms of the comprehensiveness of the sweep of mental capacity seems also to come as near as any simple statement can to an adequate description of human nature as distinct from lower forms of life. And the explanation of the devices and institutions of human life as instruments created by man for the purpose of extending his conscious contacts and thus furnishing material for a more comprehensive consciousness, seems entirely adequate to a purposive interpretation of reality, only many of the instruments through which expansiveness of mental grasp is attained can hardly be explained as products of *individual* effort or design. Thus a man carries a cane not to support himself with, but to enable himself to touch objects otherwise out of reach, just as man creates governments to furnish himself with the means to a larger opportunity. It is an 'instrumentalism' which is logically sound, and is at the same time capable of universal practical

¹ *Individualism: Four Lectures on the Significance of Consciousness for Social Relations*, New York, 1911.

application. Further, the man who does not know has no rights, is not free, etc., and in proportion as he is not educable is not capable of attaining such functions. Thus the theory is consistent with the facts, for nothing is more evident than that the lack of political and moral capacity is always an attendant circumstance with ignorance, and ignorance with the lack of desire of, and perhaps of capacity for, knowledge.

It is, however, difficult to determine in matters so complicated as political rights and moral obligations just what a given collocation of fact does finally mean, or in any definite way what in such a connection the principle of corresponding degrees of consciousness means. The state of one's consciousness does not always determine the quality of one's characteristic practical attitudes; that is, the cognitive aspect of consciousness does not, just by virtue of its comprehensiveness, indicate fully the moral quality or what Aristotle calls the 'moral state' of consciousness as well. And rights, etc., while primarily matters of intelligence, are also in a large degree matters of the active tendencies of consciousness, and, as we show later, rights are largely a matter of systems of 'vestitive fact' which have no *direct* relation to consciousness at all. Comprehensiveness implies also a quality of organization of consciousness with reference to acts to be accomplished. It is true that intemperance (when not protected by privilege), vice, poverty, disease, ignorance, etc., are generally found together, but is it necessary that their causal order is always uniform? In other words, is intemperance a necessary result of ignorance and ignorance always due to want of capacity, or may it not be that the want of capacity for knowledge, and with it lack of political and moral capacity, may be the result of intemperance and the latter again a result of poverty, etc? In such a case the question of importance would seem to be not so much one of the comprehensiveness of consciousness as a matter of extension, but rather one of the unity of consciousness due to the order of interreference of facts and values. It seems clear that the quality of action produced by a given consciousness would follow as a consequence of the internal order of that consciousness, would represent the total meaning of the consciousness rather than the mere expansiveness of it. Professor Fite evidently means that a degree of organization is presupposed in the comprehensive consciousness, that

comprehensiveness is, after all, a matter of intension. It is of course the question of the reciprocity of cause and effect, and is better disposed of simply by the concept of plurality of causes taken in logical rather than in linear relation, and in this case we are dealing with the qualities of ideas and not the extension or mere reach of reference of states of mind. That intelligence or consciousness can be a result, although perhaps not a mere result, and is not necessarily always a cause, is presupposed in the postulate of educability. And if a being is in no sense educable he is in no sense a man, and the question of individuality could not arise. The difficulty is that comprehensiveness of consciousness gets interpreted not in terms of intension, but of *intensity* and it is to be feared that such a view is tainted by elements of the aristocracy of genius theory, and would become very difficult of application, say, for example, in political life, on account of the doctrine of fixed classes, which it seems to imply. Plato elaborated essentially the same idea, and had the same difficulties with the tendency to fixity of classes formed on the principle of consciousness. The intelligence testers are just now, as a matter of fact, attempting to create a scheme to justify the existing social system, and already the assumptions about 'inferiority' are playing hob with our conceptions of race and nationality, and in psychology and what passes under the false pretense to a theory of education it is making a laughing stock of the theory of 'consciousness.'¹ The perversion of a theory at the hands of ignorance is of course no refutation of it, but it may very well turn out that there are other points of view from which individuality may profitably be considered, equally well with that of consciousness. And insofar as our theory of consciousness implies a system of rights and a social order, both of which are implied in the active aspects of consciousness as well as the cognitive, the concept of consciousness will itself have to be defined with reference to its objectivity as fulfilled and realized in a system of social ends. The question of social or political order is meaningless considered as a matter of the distribution of *persons* taken either one at a time or in groups or classes. There is difficulty in preventing a theory of degrees of consciousness from becoming a theory of classes of

¹ Such results are not deducible from anything Professor Fite has to say, but do derive from exaggerations of consciousness.

persons based upon mere differences of dignity and worth. The conception of breadth of view seems necessarily to imply either *distribution* of persons or *order* of persons, when the consciousness it presupposes is interpreted from the point of view of its practical relations. The *order* of persons can come only by 'nature' and incidentally to the attainment of objective ends, and the distribution of persons is a matter of social administration. And by objective ends are meant impersonal ends, if person refers only to natural human beings considered as mere consciousness. The order of persons, also, taken in a *distributive* sense, is not itself an end; in any sense it is not an end as the direct fulfillment of purpose. This is the final answer to administrative 'control' as a political concept, and to 'management,' etc., as an assumed principle of industrial organization.

But the idea of consciousness as practical criterion will not down easily. While the 'practical' consciousness of educational and political theory is of course often not a logical or even psychologically respectable concept, it must be recognized that consciousness is an element in every reality that can be distinguished; the mistake therefore seems to be in the undue extension which we give to the application of the consciousness theory, or to its restriction to the natural man as the unit of individuality. It is of course true that only insofar as a man is conscious that he is free, etc., but it is also only *insofar as he is conscious that he is a democrat, or a grocer, or a safe-blower, or even is ignorant or vicious*. That is, it is only insofar as he is conscious that he is anything at all as man, and that means that consciousness is an element in every distinction, and therefore not the differentia of individuality. But in what sense is consciousness an element in every real? Is consciousness in the 'form' or the 'matter'; that is, is it in the things distinguished or is it an element in the principle of distinction? If in the matter, then it becomes a question of content, and the criticisms will apply to it which were found to hold of all content considered as the stuff of individuality, and content will have to become objective, in which case we are either outside of consciousness or consciousness itself becomes objective. But if in the form, then we are reduced again to the abstract identity and homogeneity which is the negation of all distinctions, including the process of distinction itself. It

is difficult therefore to see what advantage can come to an understanding of either the theoretical or practical problems of individuality from the mere reference to consciousness. Professor Fite's very significant book gets its importance not, I fear, from the idea of consciousness taken as a logical principle, but from the very acute analysis of overt and institutionalized life-forms found as the precipitation of political and ethical activities and attitudes. And in many of these cases the degree of consciousness involved in the institutions is of secondary importance. They were perhaps in many instances not formed with reference to *conscious* purpose at all. But Professor Fite makes their discussion unusually effective by approaching them from the point of view of consciousness, which shows that the concept of consciousness even as subjective represents a profound aspect of the truth.

VII. THE INDIVIDUAL AS "EXPERIENCE"

The second type of consciousness theory conceives the individuality not in terms of any one conscious process, but as a collection or synthesis of all such processes. Instead of confining the meaning of individuality to any simple or integral fact or process of mind, it is the method of much important literature to conceive of the individuality as precisely the complex whole of all the separate life functions, or of some more or less extensive group of them. This is the distinctive feature of the empirical philosophy, which, indeed, is often rationalistic in method. It is, I think, rare that for this type of theory the individuality has been identified with any isolated mental power. It is, however, common for modern representatives of it to deny the existence of the self or of anything which may give uniqueness or unusual dignity or worth to the personality. The tendency is to identify the 'self' with the idea of the whole of detail of experience taken in the form of a collective body. This point of view is familiar to all and avoids most of the difficulties which beset the type of theory just described. It may suffice therefore to state the view somewhat after the form of its best modern representative, Hume, and to show that psychological science has apparently demonstrated its truth. Hume's famous 'I desire it may be produced' is a brief and concise expression of the whole

point of view. When I look inside myself, says he, all I find is some state, of consciousness or feeling either simple or compounded of other states. No self *as a fact* can be found by looking for it, consequently no self *in fact* can be directly experienced and so cannot be supposed to exist. Hume's fallacy here is of course the assumption that the 'manners' of conceiving of objects are not themselves facts. Thus the 'habit' of mind and 'tendency to expect' are not, for him, facts on the same level with the specific content states. It is the fallacy of regarding qualitative content alone as the criterion of reality, the content fallacy. Taken now in connection with Hume's principle that what is distinguishable by the mind is separable in existence, this 'I desire it may be produced' becomes both the law and the evidence with respect to the self if the self is to be considered in terms of content. Furthermore, the development of the modern science of psychology, in its empirical and experimental aspects, has been made possible because of this assumption, and as a consequence a sort of pluralist conception of the self has become the generally accepted theory among the scientific students of mental life, including not only technical psychologists but also students of the many subjects which have accepted as a basis the theory of human nature which psychology involves. Thus the idea of "multiple personality" seems to be the chief result of scientific investigation of the nature of consciousness. This point of view governs with a vengeance in sociology and political theory.

But its extension is even wider. It is simply the scientific and theoretical statement of the 'individualism' which gives form or rather formlessness to all aspects of life at the present time. The theoretical basis of politics, ethics, law, all the sciences which deal with distinctively human affairs, is at the present time laid in the descriptive analysis of the psychological self, the self of mental states. The individuality is simply the sum of all the mental content which forms the stuff of the history of life of a natural person; and it will vary in nature from one science to another only in point of the specific detail which each may include or exclude as for its purposes important or not. And the assumption is further that any element of content, or any group of contents, can be given adequate description and explanation by itself taken as isolated from the rest of the mind. Multiplicity thus seems to be the law

has individuality and importance only because of the difference of personality. For each of these sciences, therefore, the self which its content manifests from that of other selves. So the popular idea that to possess 'individuality' is to be different from other people shows the motive which underlies the doctrine of the self in its scientific forms. All the arguments that may be opposed to the rationalist view of the self or individuality, insofar as that view defines individuality as 'content' distinct from other forms of content, will apply here, the only difference being that in this case a different content is involved and that a shift may be made from one content to another without involving change of principle. It is therefore not necessary to repeat the arguments. Yet it might be worth while to emphasize the truth that the theory of individuality which rests on distinctness of empirical content contradicts itself in the practical tendency to standardization of persons in which it invariably issues. And the standardized individual reduces the theory to contradiction.

VIII. THE LEGAL INDIVIDUAL

There remains another field in which the degeneration of the doctrine of individuality into individualism has had important results. Unfortunately it is within this field that least has been done, at any rate in America, to arrest the tendency to decay and dissolution of fundamental ideas. And curiously, it is just the field where the cry for fundamentals has been most loud and persistent—the field of the law. The most damaging criticism that has to be made of the law in its present form is perhaps that its very cry for fundamentals has itself been the principle which is responsible for its weakness; i. e., the idea is that 'fundamentals' refers to an earlier perfect state of the conditions which form the substantial basis of the law. Under these circumstances, the advocate of the law, while consciously and deliberately and with the highest of motives seeking the betterment of the law as the system of principles of human well-being, becomes himself the worst obstacle to the achievement of the very results which he desires. Such an irrational situation seems to be the predicament of the law to the intelligent spectator who observes from the outside the working of the law in the definition and execution of justice. I think it

can be shown that, whereas the ends set up as the larger object of the law are the only ends justifiable 'in the premises,' the methods which have been adopted are not well calculated to the attainment of those ends, and further that the insufficiency of the methods has led to a misapprehension of the nature of the ends. As a consequence the best of honest effort in this field not only fails to further the causes which are consciously and conscientiously desired, but on the contrary confuses the situation with a further degree of irrationality. Hence the efforts at legislation and law reform not only have failed in most particulars in recent years, but it seems clear that from the nature of the methods employed little else but failure and confusion can be expected. A criticism of the method of the law as the method appears in the working out of two of its fundamental conceptions, property and contract, will be undertaken later.

The law, like every regulative science, is an attempt to effect the adaptation of situations of fact to a standard idea, in this case an idea of 'right.' Put in simpler practical terms, it is the attempt to control, or, more accurately, to order, things in the interest of ends. It is however often overlooked that this regulatory notion of the law is really secondary. The primary and essential purpose which represents the nature of the law is, as Aristotle says, the determination of what is just. And since the 'things' it attempts to control are just the things which create the ends for which the control is desired, no science has greater need of consistent and thoroughgoing critical analysis continuously applied in order to prevent the utter confusion of means and end. And nowhere, in fact, is confusion more common or more fatal. The law must set out with the realization that no final distinction can be made between the ends it seeks and the means it employs to attain those ends, must realize that it is dealing with a growing reality. It is the one case where ends and means fuse, and without eternal vigilance, become confused. This is well exemplified in the tendency to confuse the procedural with the substance aspects of the law. Consequently, when it undertakes, as it must, to become scientific, the method of science resting in general upon distinction and negation, there need be little surprise if its results show most of the evils that have been pointed out in connection with other practical interests.

A more exhaustive analysis of the legal question directly involved in the problem of individuality will be made in connection with the discussion of the 'juristic' personality. At this point our interest is to find how the law defines the natural person, in contrast to which the juridical person is made necessary in order to meet successfully many conditions of fact which arise out of the complexity of social relations. And the greatest difficulty here, as in other connections, is that no deliberate attempt is made at exhaustive logical definition, so that a definition must be sought in the implications of legal language and legal usages. As in the case of most legal definitions, that of individuality or person is quite generally merely practical and represents a procedural device. It is therefore practical in much the same sense that a recipe in a cook book is practical. At the very best the definition is primarily diagnostic in character, stating a principle of action as 'indicated' rather than a substantial nature described as existent. Such is the characteristic definition of the individual in the conception of person as subject of rights and duties, or the being who can sue and be sued, can be brought into court, made the subject of punishment, etc. The essence of the person is in these phases thrown directly into the field of practical relations, thus making the legal definition of individuality refer more directly to practical reality than other types of definition, and whatever conception of the personality issues will bear traces of its contacts within the whole where its locus has been determined. Thus the question of the relation of the person to other persons and to the whole of persons is forced into the focus of attention, and becomes the center around which all discussion must revolve. A proper synthetic method of study would leave the individual firmly rooted in the nexus of interpersonal relations thus established; but the necessity for a wide practical application of ideas of personality in the law courts, and the necessity for simplifying the train of ideas and the procedure to the level of intelligence of the ordinary litigant, as also perhaps of the ordinary judge, has forced the breaking up of the complex of relations into simplified and isolated units. And this tendency has been further enhanced by the necessity for clearness and precision of language, particularly in the repetitious use of words in legal language to avoid evasion of issues. All these facts have contributed to

the abandonment of the comprehensive and synthetic types of ideas for the clear and precise, the simple and unmixed, a one-to-one correspondence between word and thing represented by it, ideas of an atomism that is a perversion of the facts it is intended to represent.

The person, then, is the subject of rights and duties. Insofar as a merely designative use is made of the definition it is made to refer to the 'natural person,' the biological and psychological individual. But for the law in its deeper insights the individuality is already beyond the reaches of mere fact and descriptive science, and, by the objective implications of 'right' and 'duty' is made a question for metaphysics. The person gets its nature from the nature of things—not from itself. And this is implied in the primitive meaning of 'right' as that which is true to or squares with something other than itself, as something measured and valued by its references beyond itself. And the same implication is contained in 'duty' as what is 'bound' or 'owed' or 'obligated,' to something not itself. That is, the primary implications of individuality from the point of view of the law involve that synthesis of the particular with the universal which the rigor of logical theory forces upon the mind when the facts are once recognized. The law therefore represents that 'implicit' logic which is the core of human history and which gives it its point of value to human civilization. It is the fundamental universal feeling of the fitness of things made conscious as both the ground and guide to human endeavor, such an idea as that of 'common sense' as used in equity. The law is then the 'rightness' of life become consciously the means to the right life. Law is then the universal which life *means*. But individualism has frowned upon any such notions as these, as they are too difficult and 'metaphysical' for its immediatist purposes.

For individualism, the relation of a 'right' to its subject becomes, both in the processes of legal thought and in the procedure of the court activities, conceived as a simplified connection between two perfectly simple and isolated things. It is made the abstract *r* which has no meaning except that it stands or holds between abstract *a* and abstract *b*. That it may have determinative effect on the nature of either term, e. g. that large increase of possession should change the personality of its holder, the law does not see; and that its

connection to both terms is regarded as accidental, is shown by the fact that it can be separated either from the one who holds it or from the one 'against' whom it is held, by the intervention of other agencies or by the authority of the court. The transfer of right is a large topic for a theory of law which holds rights to be 'inalienable.' And this is true even while we suppose the law to get its justification as the guarantor of 'natural' right. After the right is severed from the individual it is explained that the individual never really had the right, although his exercise of it may have been previously protected by the court, or subsequently guaranteed to him for no other reason than lapse of time. It is curious that even after the acceptance of the theory of natural law, it is maintained that a right has validity not from nature as *protected* by law but finally from an act of investiture by the law. That is, for practical purposes nature and law are two distinct things, one of which must be supplemented by the active agency of the other. The trouble comes from the impossibility of identifying law as natural with law as the command of state. It is also curious that a right may be a purely accidental attribute of a subject and yet be valid so long as the law has not taken cognizance of it by special act. That is, it is right by law when not recognized by law, but wrong after the law recognizes it. For when the law acts the subject is said never to have possessed the right: The right rests upon the man like a detachable collar; it is natural to him at the same time that he can be either invested with it or divested of it. But as natural it as law invests itself, while to be law in the political sense it must be recognized by the special agencies through which the law acts. Further, the right may be voluntarily parted with by sale or devise or gift, or involuntarily lost even through the fraud of another person. It may also disappear altogether under certain circumstances, and possibly reappear under others. And it is conceivable that the right may change its quality and become its opposite, a wrong, without affecting the real significance of the parties to which it refers. Rights as 'detachable' as these would hardly seem to be the essence of a unique 'person,' hardly the characters in terms of which a metaphysically distinct personality is to be defined. A case of 'liability without fault' is an extremely interesting situation, while we hold to distinguishable subjects of rights as the basic

concepts; and it will be a great day for the law when it can face such a situation of fact without resort to magic or pretense or child's play. But such conceptions, which are, all of them, sound, are incompatible with the presupposition of natural person and of right as a thing which can be shifted in its relations without modification of its quality. And there are many of the most significant conceptions of modern legal thought which are altogether out of harmony with the ancient notion that a subject of right for juridical purposes is identifiable with the natural person considered as isolable and unique. In fact, the most useful and used of ideas, e. g. property, contract, etc., are directly contradictory of such a conception. And this is true of right and duty in their strictly legal sense, regardless of what may be true of them in their political and moral use. That is, in their definition by their relation to the law, as a mere question even of the formal observance of law, the concepts of right and duty give rise to a host of questions that are unanswerable by reference to the 'subject' of rights and duties.

But the 'subject' of rights and duties becomes equally perplexing in those cases in which the courts are called upon to define the subject, or to determine in a given case whether a person who claims to be a 'subject' is so in fact. In some such cases rights are Bradleian "floating adjectives" which accept incidence in none of the centers of juridical reality. I refer to commissions of lunacy in questions of wills and inheritances, guardianship of minors, defectives, and dissolutes, etc. And my point is that, in a given case, instead of determining the existence of rights by reference to a juridical subject which is established and taken for granted by the definition, *the existence of the 'subject' is often determined upon by the establishment of the rights.* That is, it is all a question of the existence and 'rightness' of a determinable complex situation of fact whether there is a subject or not, or with what particular natural person the subject determined upon will coincide if with any. Whether or not a given human individual is a person then depends not on his innate qualities or substance as the seat of his capacities, *but upon relations which are outside of him within the social body*, and these relations are determined not with reference to the person, *but with reference to the social ends adopted as the criterion and standard of the*

law. And there are probably situations of clear right where incidence in a particular 'subject' is not indicated at all, or necessary for the execution of full justice. I am not raising questions as to any of the facts involved in these cases; what I am concerned with is to show that the processes of application of law may all be complete without reference to specific persons, and that the isolation of the person is necessary only for purposes of convenience in making reference to the distinguishable parts of a 'social' situation, pretty much in the way that a more or less impersonal situation is sometimes adjudicated in a 'friendly suit' or a John Doe proceeding. Then the whole process of execution of justice by the courts may go through to its end without necessarily implicating specific persons; and it is supposed to be the peculiar virtue of the judge to depersonalize the question at issue and render a decision from the point of view of 'abstract' justice. Abstract justice is here merely the system of related fact which constitutes the objective social situation. The subjects of rights and duties are then merely symbols of critical reference points in the complex of social relations, the proper ordering of which with reference to common ends or ends of the whole is the idea which gives the 'substance' aspect to the law, and which creates the metaphysical subject implied by it. And it is this idea of end *substantiated* or given objective expression universally which is the ground of the authority of the law—the lawmaker whose will may not be disobeyed. This end may be symbolized by persons or subjects. And the difficulty is in the interpretation of this objective situation when conceived as will or as the dynamic causal agency which produces the situations in which rights and duties as "states of fact productive of legal consequences" appear.

The substantial aspects of the law are then precipitates or crystallizations of certain general procedural modes, and these modes are replicas of certain social processes. The persons of the law are not the original sources *from* which the relational capacities which represent juridical acts issue as by the magic of creation, but wholes *into* which these relational capacities synthetically converge; the person is therefore such a complex of social capacities as will contribute elements of stability and universality to the end, the universal which represents the fulfilment of an individual into individuality. They

are therefore positive and constitutive factors in the nature of things, whereas the original persons from which emanate 'rights' and other relations are in reality the abstract residues of rights and other relations after those relations are separated from the whole which gives them their content and meaning. That the execution of the law presupposes as necessary such real persons is clear from the habit of the law of creating them as they are found to be required in giving final form to the end created by social purpose and subserved by the law, as in the case of working out the "rights" involved in conflicts between capital and labor it is found necessary to recognize the labor union as a corporate person. It must in the end be recognized that there is no essential difference between the corporate or fictitious and the natural person. The 'fictitious' person is not therefore the abstraction to be got rid of, but the concrete qualitative whole of proximate ends to be realized in the ultimate end of social or 'common' good. And in proportion as the ultimate end is realized in the common purposiveness of human life, definiteness and clearness of concrete content will be attained in the real persons which it is the purpose and function of the law to 'create' and 'protect.' And this attainment of persons is the justification of the law; "for the administration of justice is the determination of what is just" in the activities which are formative of personal character. The 'executive' function of will is therefore the legislative enactment and embodiment into order by intelligence of the conditions upon which the life of the whole of persons depends. The substantial aspects of law represent therefore the hypothetical delimitation of 'subjects of rights,' just as its procedural aspect represents the embodiment of those subjects with a concrete content and their objective ordering "with regard to the Ideas." The substance is the spirit; or universal; the procedure is the garment of flesh or objective system of instruments which gives the spirit executive or constitutive force.

It is from this latter point of view that the person is the entity which can sue and be sued, be haled into court, be compelled to act or refrain, and do all things necessary to the proper constitution of the end. As was said, it is within these relations that the person gets his meaning. And the meaning which he gets will be contingent upon the type of interpreta-

tion of the human relations whose complex syntheses constitute human ends. It is the type of interpretation which the relations of life are given by the lawyer that makes the latter a fit subject for the most fundamental and far-reaching criticism. It is ethics (including religion) and politics (as including economics) that furnish materials for the lawyer; and the kind of structure that can be erected with a given material will depend upon the qualities of the material, the nature of the tools used, and the degree of intelligence with which the end is envisaged. The structure which the lawyer has made for modern life has drawn upon the imperfect and inadequate political and ethical ideas of individualism as described above. We have noted with reference to those ideas that the one which has had most far-reaching influence in the evolution of civilization is that which presupposes the uniqueness and the finality of the value of the natural human individual. It came into being as a child of the despair and hopeless pessimism which followed as the result of the collapse of the social institutions of ancient civilization. It was preserved and cultivated and nursed to maturity in some of its aspects by the medieval church, and under the Christian influence reached perhaps the full culmination of growth of some of its qualities and tendencies. In the form thus attained, this idea, in its larger attitudinal aspects at least, was found compatible with the instincts of the European peoples, and, with their own interpretation, was accepted by them. It is therefore, from the point of view of its history, a complicated idea; an Idea; as it must be to represent the integer of the real, as it has come to do, with western civilization.

But the real contains all the defects of the actual. And so far as historic evolution is concerned, the defective elements of a real form may become the constitutional and directive force within the whole. And this is what has happened in the case of the historic conception of the individual. There is no destiny which foreordains the good; for destiny "has not power as it has manifest right." And the shallow optimism which believeth all things and hopes to compass the end by awaiting it, is itself the instrument through which constitutional defect accomplishes the bad. The evolutionism which knows that the good will "sooner or later" "gradually" be attained is puerile. The unfriendly germ which the healthy

organism tolerates, perhaps uses, will, when conditions *created by the organism* become favorable, take charge of the life of the organism and destroy it or divert it toward monstrosity. It is precisely this latter result which has befallen the idea of individuality; the perversion of the original real meaning of individuality has gone on to the point where its hand is lifted against its own life, and there is no absolute assurance with what effect the stroke may fall.

The law in its traditional and prevailing form therefore sets out from the assumption of atomistic externally related individuals. Each of these is complete in itself and has its destiny in its own nature. Each is therefore a source of the law, with the consequence that there are as many "laws" as there are determinable integers. This consequence of skepticism and sophistry is not generally seen by the advocate of individualism. The fact is that contemporary individualism is more important for the exceptions which it makes to its own rigor than for its positive statement. It is suggested that the idea has been workable at all just because of the modifications and exceptions that have been made to it. The whole is then the 'state of nature' with the *bellum omnium contra omnes*. It is a peculiar result, that, starting out with an indefinite number of absolute sources of law, we should presuppose disorder. The difficulty is of course all due to the quantitative judgment¹ we have passed upon the whole from the start. But given disorder as the state of nature, a multiplicity of differing and conflicting ultimate wills as the social body, there looms the impossible question of how to get the wills together. And this bootless question has been the prime concern of modern legal theory in its larger social aspects from the beginning. Its concern has been with the question how to *make* people behave with reference to each other after it has assumed that people by nature cannot so behave. It has therefore tended to the adoption of force as its instrument—the vicious destructive assumption that force as the 'power to compel' is the means through which law is to achieve the respect of intelligence. Law has then necessarily been negative in form and substance, and instead of exerting an ordering influence upon life has had a dispersive tendency. I cannot avoid

¹ Cf. Holmes, *Collected Legal Papers*, New York, 1920, p. 231.

hazarding the assertion that human life has achieved such order as it has achieved in modern times in spite of the instruments of government through which the law has expressed its negative and dispersive influence. If our individualistic presuppositions are true, the 'freedom' of man then is to be a deliverance from his own law, the abandonment of the mistaken force which he has set over himself through his own defect of ignorance,—“that government is best which governs least.” His common enemy is the defective instrument through which he attempts his peace and his good. The 'distrust of government' is therefore inherent in the impulse which has created modern governments, and mankind has achieved a degree of good and of order in spite of the instruments and purposes which he has recognized as his own. It is once more the *reductio ad absurdum* of individualism. And it is necessary to say this out of respect for the reality of law. The fact that law has for four hundred years been formulated after the model of a false view of nature and of human nature, and the fact that that view of nature in all other connections has been proved false, suggests that a thoroughgoing reestablishment of the law upon a more adequate ground of human nature is the need of our time. It will be suggested in the proper connection that a new ordering principle, a new law, is growing up outside of the dark contradictions of individualism within activities and relations which are quite often regarded as extra-legal.

The mind individuated by its negative and quantitative aspects and relations is not therefore the human mind. Negation, difference, in the abstract at least, is not the principle of constitution or individuation of the real, but the principle of *discrimination among reals*. And when its discriminatory function is confused with its constitutive function, the result is that deadening mechanization of human affairs which our 'scientific' accounts of life make of it. Then the 'economic man,' the 'ethical personality,' and the 'legal person' are abstractions which in no way can tell the whole truth about those demands upon the End which Humanity makes in the interest of Politics, Ethics, and Law.

CHAPTER IV

THE INSTITUTIONALIZED MIND AND INDIVIDUALITY

That humanity makes larger demands upon the end than the present sciences of politics, ethics and the law can satisfy, is evident from the confusion and unrest which is prevalent everywhere. The organization of human affairs in their practical aspects satisfies nobody, as is evidenced by the cynicism which has become well-nigh universal. We have seen that individualism implies a principle of cause and mechanism as the law of human nature and of human relations; this law in its practical aspects is an expression of mere brute force, which is the final category in the system of individualism. A social 'order' which rests upon the law of competition and whose ultimate practical concepts are property and contract is never at peace, is continually in a state of active war. For the war idea prevails generally, the relation between individuals is one of antagonism and struggle in the individual's exclusive interests, and while the assumption is that they are exploiting nature, the fact is that they are exploiting each other. Its main interests are expressed in the institutions of property and contract, and its idea of the relation between individuals is competition on the false assumption that competition can be regulated or ordered by the fiat authority of law which expresses the power of the body politic. But there is no end that can justify force as a means and no human end that can be accomplished by the mere exercise of power or authority. All ends are *in the end* values, and as such can be attained by growth, but never acquired by power or skill. The only end that can be sustained by either physical or psychological means, is the truth that force attains no ends. We are only now beginning to understand the deadly destructiveness of psychological forces as the enemy of all order.

We have found that the understanding of human means and ends is grounded upon an analysis of human nature as manifested in the activities and relations of social life. Criticism then of established systems of ends and the means employed to their attainment, if made effective and justified, must find perverted conceptions of human nature as symptomatic of the defects of the objective forms which human nature gives itself in the institutions of civilization. Some of the fundamental perversions of human nature have been examined, the reference being mainly to the institutions of life which have been most prominent in the interest of the past few centuries. It is these institutions of political, ethical and legal life which have been the genius and meaning of the modern period of human development. There is no suggestion that they are worn out; but it begins to be increasingly clear that the ends which they were created to serve have been superseded by ends somewhat differently envisaged, ends the attainment of which will entail the reorganization of the old institutions, or at least the infusion into them of much new content. It will appear also that new elements of principle are demanded insofar as newer ideas of ends show real progress. If these institutionalized means are not entirely superseded they have become dulled by use and time, and rusted from neglect of critical attention, so that as tools they are as ready to wound as to sustain and satisfy. It can be said of many political instruments that they are the means which prevent the attainment of significant ends. And it is indisputable that they have in some respects called attention to their defects by turning upon and rending the hand to whose use their creation was originally dedicated. Representative government as such now begins to appear as a case in point.

Does there appear, then, a way out? A shallow reference to optimism or pessimism here entirely misses the point, and confuses the issue by attempting to formulate the problem as one of proper attitudes or feelings in personal morality. The sooner we learn that it makes but little difference how we happen to feel about a particular thing the better. Even though feeling is a motive of action, *significant* action can follow only upon the unimpassioned idea of end. An end may be attained because of feeling, but its significance will depend upon other factors. It is of the nature of feelings to attach

themselves indiscriminately to whatever object is presented, and this indiscriminateness as to point of objective attachment is what we mean by the subjectivity of feeling. This must not be confused with what I have called the indifference of reference which, as the equivalent of universality, is the objectivity of an idea or a judgment. Between indifference and indiscriminateness lie all the differences in the world. The 'indifference' of ideas is always a reference to objects as ends, and is general; the indiscriminateness of point of attachment of feeling implies the reference to abstract quality as psychological state, and is always particular. Not that feelings refer to no objects, rather that they refer indiscriminately to all objects regardless of their total meanings, but always with respect to specific or specialized quality. This is of course the weakness of prejudice, the unintelligence of a state of mind which cannot guarantee a persistent reference to its appropriate object, for the reason that no *specific* object or object which is typical or universal is appropriate. It cannot verify. It cannot prove universality of relation or real indifference to any point or in any direction. It is also the reason why objectivity, i. e., persistence of indifference of reference, is attainable only within a very limited area in esthetic or other forms of practical experience which are strongly charged with feeling. A few *general* references, that is, references to types of reference by specific forms, and a few references concerning the general nature of quality, is about the best a 'theory' of esthetics, or any practical philosophy, on the older types of concepts of organization, can do. So our feelings are of no consequence *as matters of principle*; they derive their importance not from their truth but from their existence, that is, from the fact that they, while not objects, become disturbing content for objects, and thus tend to break the objective reference of fact which is the basis and condition of order.

I. INDIVIDUALITY AS PSYCHOLOGICAL

But while mere 'states of mind' as such are of little consequence, the objects which they involve, but to which they may in no simple way correspond, are the basis of all significance. In any case the appeal to human nature must justify and explain its mental aspect, which, for ordinary purposes, and in

the first and most immediate instance, is what human nature means. The problem here is, in what way or in what sense do states of mind involve objects? Perhaps it is, in a sense, the old question of epistemology; but that has of late given way to considerations of psychology; and the psychological aspects of objects are precisely what we do not mean. It is rather the extra-psychic practical object, the physical and institutional object which is *used* as an instrument to an end, that we have in mind. It would seem, then, that it is largely a question of the constitution of mental life, and that becomes a matter of the order and ends of the active life, a question of seeing the facts in their complement of objective relationships. The most adequate reference to objects then consists in the descriptive evaluation of relationships taken as self-subsistent. We are to see that what we may know of 'states of mind' must come from an appreciation of objects and their interreferences, that 'states of mind' in order to be known must themselves become objects in the same sense in which any other facts are objects; that is, they can be known only by their outward and universalized connection with things.

But psychology as a 'descriptive' science has felt the destructive and blighting effect of the negative and separatist causal method more adversely perhaps than any other of the human interests. But not only is this so, it has become the plaything and in many cases the immoral instrument to the sordid greed and lust of persons for whom the interest in human nature as such has never appeared as worth while. As an example one need only cite the 'use' of psychology in business and advertising. And, while the criticism of the 'descriptive' psychology as that which severs out the facts of mental life into a general aggregate of atoms, which aggregates of atoms when labelled are supposed to satisfy all the logical aspects of classification, is final; the criticism itself suffers from the negative method in that it exhausts itself in saying what the mental life *is not*. The 'idealist' therefore who merely says to the mental physicist "Nay, not so," has adopted the physicist's method, and his negative results are less acceptable than those of the physicist in that they rest upon no positive quality of fact or logical ground. The persistence of the 'experimental' method in psychology is to be explained by the fact that its atomistic results do, if faultily,

represent, by a sort of symbolism, at any rate, the qualitative content of mental facts; it at least names or designates those qualities by a reference to their positive character, even while it destroys the positive character of qualitative reference by giving its facts an external and quantitative type of one-to-one relation to each other. But the contrary view which merely denies the mechanical relation of mental facts and insists only upon the togetherness or 'synthesis' of the facts in an undefined way and without any clearly formulated principle of their relation, is merely pushing the negative method to its logical conclusion and is reaping the reward of abstraction as a result. Thus the insistence upon the 'purposiveness' of the relations among mental facts is of little logical or psychological importance while we are not told in objective *factual* terms what the purposiveness means in *specific* cases, in terms of facts that are cases of law. The empiricists' argument, "show me," is final as against the mere designation of a type of relation so long as no way of interpreting that relation with its indifference of reference to particular terms is forthcoming. The two points of view show the same fallacy—they both adopt the separatist method of negation, the one insisting that only the particular by itself is real, and the other that only the universal as such is real. The answer to both is that only the individuality as the synthesis of particularity and universality, the type-fact, is the real. And, with reference to methods, it is not negation that is real, but the *instance*; the *case* of specific and describable and interpretable fact, the fact whose factuality is its meaning, the 'fact as a case of a law.' It is of little consequence then to heap up quantitative and meaningless facts *ad infinitum*. The *infinitum* is the only final issue, an infinite number of repetitive atoms; while, for all human purposes except one, one fact is as good as a billion. And the one exception is the meaningless interest in abstract process, the interest in the mere excitability of motion, the joy of being on the way with no destination in view. A granular universe is of no more interest than a block universe; the one slips through the fingers, the other blinds the eye. Concrete meaninglessness means no more than abstract emptiness. And both are nonsense.

The thing demanded with respect to the content of states of mind, as in all cases where reality is determined, then, is

the *specific meaning*; that fact with reference to mind which displays the characters of a type, which carries its family history as well as its species relationships on its face at every appearance; at the same time that it carries the badge of positive qualitative uniqueness and ordered integrity which gives its family history and class relationships the meaning that they have at *this* as well as all other times. This is the 'character of specific value' of evolution theory. It is to be noticed that the phrase "specific meaning," taken with the ordinary connotation of the terms, is a contradiction in terms. As used here it is implied that "specific" carries the reference to species or universal; while "meaning," whose ordinary implication is that of universality, as here qualified, indicates also a locus for the universality in sensible definiteness of fact. The phrase is intended to imply, therefore, the unity of universality with particularity, which is the individual. It is therefore, as mental content, defined independently of distinctness or togetherness, in that these (distinctness and togetherness) are seen to be determinations *within* the integrity of the fact, and not overt connections which the fact, as mental, 'bears' to the system of fact which constitutes its species, i. e., to mind as such. No meaning can ever be attained by putting facts together; if the facts, or any one of them, do not 'bear' the meaning as a reference to order in themselves, no meaning will accrue to their plurality when put together. Each fact must be principled inwardly by the same law which unites it with its species. The whole scheme of psychological method shows fatal evidences of the constructionist fallacy—the idea that we are given a mass of independent unreal atoms which it is our business to put together and thus confer upon them meaning and reality by hocus pocus. Or, from the view of the critics of experimental psychology, we are given a vast homogeneity of nebulous and undefined 'reality' principled by abstract 'synthesis.' In both, analysis seems to mean the house-wrecker's process of picking out the seams of distinction between the bricks of reality and throwing the latter into the helter-skelter of classification on the ground; and synthesis the process of the mason who "takes reality as he finds it" and by reconstructing the seamy differences between its parts (which, by the way, are not real) finds that the whole is already "there," "implicit" in the parts.

There are, however, facts of modern psychological investigation which are vastly better than the psychology which usurps the name. And upon the model of a very few of these, which are of the type-fact sort in that they represent principled particulars, a theory of human nature can be drawn which avoids the violence and harshness as well as the inadequacy of the older views. It is unfortunate that the psychologists do not take advantage of the results attained within their field to produce a constructive theory of human nature; and it begins to appear that the false method of psychology has produced its appropriate or apposite type of mind in the psychologist, and has left him hunting indefatigably for the ultimate atom in the form of a 'complex' or an 'instinct' which by magic is to be the root of 'mind.' But psychology has obtained two or three very significant results.

To take as an instance one fact of supreme importance which comes, indirectly perhaps, from psychological investigation, there is the fact-principle of the continuity of mental life. This expression, from the psychological point of view, seems to regard the wholeness and self-containedness of the mind as an inner quality of the mind of the individual taken as an isolated unit, and leaves to 'social' psychology the question of the continuity of interpersonal life. But both individual and social psychology overlook the real objective or human aspects of mind. Thus the question for social psychology comes to be, how the individuals contrive to develop an external but not objective unity of individuals in a social whole. But within the real individual no mental fact is strictly, except for convenience of description, separable from at least some other facts, and at least *some* mental facts are connected by principle outside the individual mind. In the attempt to point out the distinguishing quality of a given fact nothing is so clear as that the quality recognized is also the qualifying character of other facts, and, recognizing differences of degree, is present in some force in perhaps every fact. Not only is this true of the larger general attributes of mind such as 'quality,' 'intensity,' etc., which have their specific nature for each department of mind, but it is also true to a greater or less degree of the qualities which specify particular types of fact. Mental characters tend to become universal so as to attach indifferently to various sorts of typically mental facts, as well also

to apply equally as qualifiers of facts which could in no sense be called mental at all. That is, the characters of mind in becoming universal, transcend the limits of mind and attach to typically external and objective facts beyond the mental confines. Thus there are attributes which are common to sensations from the different sense fields and as such are *mental* characters which hold of objects not in sense fields at all. While tone is an attribute of sounds properly, it is carried over to indicate the esthetic aspect of facts in many other connections, and we can, I suppose, speak of the "feeling tone" of any sense fact. Further, the condition of irritability of the nervous system as a whole is spoken of as a 'tonic' condition, which may be indicated as 'low' or 'high.' It settles nothing to say that these are figurative uses of the term, the term is used in this figurative way to indicate an identity of experiences which have widely different sense origins, or are mediated through different sense tracts. It is therefore the language that is figurative or fictional, the reality of fact is there as universal. A better case, however, is the so-called transfer effect between one sense and another, as is indicated, for example, in the statement that something 'looks' soft, or 'sounds' sharp or 'tastes' red. It is doubtful whether these experiences can be explained by association, even if it is not possible to prove that they are not thus explicable; but even if they can, the fact of an identical quality in the experiences remains to indicate their continuity with objects that are in every sense extra mental. The explanation of 'how' the facts came to be is not in any case or by any possibility a designation of immediate quality; in fact the quality as immediate is itself the basis of all explanations which get stated in terms of cause, or of any other scientific categories. Even pure quantity is meaningless except as the quantity of a quality. The same can be said of the explanation in terms of nerve connections, the supposition of nerve filaments in contact in some part of their course, or ending in a common point in the cortex, explains nothing so far as meanings are concerned.

II. INDIVIDUALITY AS A LOGICAL CONCEPT

From these and similar facts which can be produced from all aspects of mental life, the inference to continuity between

mind and the extra mental seems justified. And it is only continuity in that sense, as between mind and what is not mind, that continuity has any meaning. But in this sense continuity becomes the basis of explanation, as itself a fact, of the relations between the individual and the whole, and thus the ground of meaning for the term social in all its connections. But this also shows that the 'social psychology' of instincts has nothing whatever to say of social reality or of the practical sciences. For the purpose of a descriptive account of the facts the idea of continuity in this sense becomes very useful. But another form or aspect of the same general fact is of more consequence to the interpretation of mental life—that of unity. By the unity of mental life I mean to refer to no metaphysical entity which is theoretically isolable, but simply to the fact that, since all qualities seem to run into each other and to be merely distinguishable, since difference is never real or final, but not separable from each other, it is the *same* mind and the *total* mind that experiences in seeing, feeling, touching, remembering, imagining, reasoning, hoping, acting or willing, and in all of the types of fact which are distinguished for classification purposes. And this does not constitute mind, for practical purposes at least, into an entity which is capable of being described independently of its functions. Rather it makes any instance of mind an implicate logically of 'all' minds or of mind as such. It is, for present purposes, merely a statement that all these experiences are unified into a total meaning, and that apart from that total meaning together with its existential basis in an order of fact, none of the experiences have a meaning, nor do they have an existence. For psychology, at least, *esse* is *percipi*. This unity becomes important and interesting when the question as to the relations of the various functions of mind is raised, for example when it is asked in what imagination differs from reason, or perception from conception, etc. And it is evident at once that the psychologist cannot describe perception and, having disposed of it, go on to other functions which will in turn be described independently. The relations of the facts in the two cases must themselves be disposed *in some form*, and not disposed *of*. And when the question of relations of functions arises we are driven to set them in relations to each other which represent them as stages, perhaps in part over-

lapping, in a continuous and unitary process of growth. And we are driven to do this, for theoretical purposes, merely because of the indistinguishability, not of reals, but of the real.

So that beginning with what is as near simple quality as can be found, the original qualities of sense, an active growth tendency must be attributed to the quality in order to 'associate' the quality with other qualities in objects. That is, continuity must be presupposed, and not produced; the associability of a fact is internal to its nature, and not an addendum to it. Then 'bare' sense having 'made' a connection outside itself, or its real connection having been perceived, becomes the percept, the sense feeling with a degree of meaning attached, which, with a further degree of meaning will become the memory image, and with the continuous growth of the halo of meaning the same sense basis will become, successively for scientific, but all-at-once for logical purposes, the ground of all types of mental fact. Even the feelings get their propulsive force, the element of 'will' which is their essence, from modifications of this sense basis, even if we have to assume the affective quality as original and underived. They are not 'passions' if that implies passivity. It is therefore the mind that sees, feels, hears, imagines, thinks, etc., and the mind in its entirety in each case. In the very stuff of the simplest of experiences there are then the inner subjective phase or ground of sense feeling, and the outer objective reference to fact, the meaning which gives wholeness and universality. 'Social' reality is, then, merely a case of objective reality.

It is, however, in ethical, etc., questions that the diversity of the mental state becomes important. To leave the question stated in terms of halos of meaning is of course merely appealing to rhetoric, although the ultimate reality of social relations is itself a fiction. What is wanted is to show in terms of actual experience-stuff, which, while it involves sense quality, does not consist of it, what is the nature and import of the outward reference which is assumed to represent the meaning of the inner state. And the answer is to be found in the facts of action, where thought action is to be regarded as principle and criterion. It does not necessarily involve the interpretation of mental life in neural terms merely to connect descriptively the ideational processes with the physiological. The objection lies primarily with their identification, for as

ideas, the facts under consideration are in either case values and so indifferent as to the means through which they are expressed; indifferent, that is, to the matter of means, while there is always a functional or formal adaptation between the idea and its medium of expression. As against the psychology which identifies the mental processes with the physiological or neural, there is nothing to say for the simple reason that to such a point of view all values are on the same level and show no gradations. There are for such a point of view no differentials, and so nothing real. By action, then, we mean primarily the movement and performance of function through the organism, with no reference whatever to the 'origin' of the movement, which, in its higher stages of physiological development, has already evolved through the *logical* processes of organization out of the sphere of mechanism and has become an element in the sphere of purposes.¹ The explanation of this evolution is metaphysics, which, while we have to touch it in spots, is beyond our present purpose. But the higher stages or forms of movement involve ends that are external to themselves and yet incorporate themselves with these ends into a whole of meaning. This is implied in the difference we make between *movement* and *action*. And this process of organization involving mechanical processes as ground and interpretative processes as consequents, becomes in its higher forms the organization of functionally related wholes into the organic forms of life. These forms are then incorporate unities or unifications of functional processes, which of course involve a basis in mechanical fact. Mechanical fact does not mean a unique or isolable *kind* of fact, but fact from a definite point of view, the point of view of *mere* movement. Mental states, therefore, even in their mere descriptive aspects, implicate themselves with objective orders of fact, and fact in this sense of organization is the basis of social reality.

But it is the more strictly psychological status of organic functions that we require to understand. And this under-

¹ This is coming to be pretty well recognized by biologists. Cf. J. S. Haldane, *Mechanism, Life and Personality*, 2nd edition, New York, 1923. The acceptance of the category of order or organization seems to imply purpose. Cf. Ritter, *The Unity of the Organism*, 2 Vols., Boston, 1919. Also, the idea is finely and perhaps finally stated in the distinction which Aristotle makes between mere movement and action. *Ethics*, Bk. X.

standing can be reached most directly and fully, it seems to me, by taking as a basic unit of active experience those processes that are found concomitant to the functioning of the reflex arc. It must be kept in mind that, as such, the reflex arc does not implicate action; it involves merely movement. It may be an oversimplification to say that the elementary sense feeling together with the organic movement which is invariably connected with it is the unit of experience and at once the solution of the vexatious mind-body problem. Psychology has not succeeded in isolating the sense feeling or "conscious state" or even in separating it completely for purposes of description, from the movement which is its overt aspect. This separation perhaps cannot be effected even introspectively. And the attempt to isolate movement and to connect it with nothing but other movements is the simplification which results in mere repetition and abstract process, as has been pointed out. Movement has no meaning when related only to other movement, just as a mental state has no meaning when referred to another mental state. The logical consequences of the attempt thus to isolate either mental state or movement is the mechanical conception of causation with its hard and rigid necessity, a cause which *produces* nothing, but which merely *reproduces* the abstraction which represents the original assumption of simplicity. The attempt at isolation of the conscious state results in the absurdity of unconscious states, and the worse absurdity involved in saying that consciousness when it becomes 'pure' destroys itself. The instance of hypnotism as a case of stripping the consciousness to the skin and the resulting unconsciousness which comes from narrowing the attention to a single sense fact, is the basis of the pathological psychology which is so appropriately named—a psychology which is sick as to its own principles. And the isolated movement, repeated to infinity in the straight-line, one-to-one type of 'necessary' causation, a causation which comes from the pluralization of fact and evades the mutuality or reciprocity of causes implied in multiplicity of *facts*, is an abstraction which is equally vicious. Given the two assumptions of isolation of the mental state and of organic movement, the mind-body problem is irrational; it leaves two supposed entities staring blankly at each other across a chasm eternally, a parallelism which can never be taken seriously.

Nothing simple is real; and the real is not homogeneous. The psychology of conscious states as isolable can therefore never go beyond association interpreted as abstract juxtaposition, which is the pure abstraction involved in mere movement, and the 'new' psychology of specific functions is merely repeating the error of the *regressus ad infinitum* of abstract movement of the old. And with association as the principle of mental life, psychology simply throws up the sponge at the approach to the problems of attention and imagination, neither of which can be understood from the assumption of isolated details which are the stuff with which psychology, either old or new, deals. Attention, described in terms of the detail which fills the field of consciousness, necessarily then gives rise to questions as to its peculiar 'quality' and as to whether 'clearness' is the special unique quality of attention. These are questions of ultimate origins and are unintelligible. It is the old fallacy, the attempt to simplify to the point of forcible identification, since force is the only cogency known to mechanism, of a qualitative detail with that whole for which the detail and its quality become a detail and a quality. And yet the reference to objects here is clearly the correct motive, only the object is not necessarily the simple either as mind or body. No topics of discussion in the psychology texts are so hopelessly inadequate as those of attention and imagination, which are precisely the functions through which objectivity in experience is attained, and they will remain confused until the descriptive method tempers its blood-thirsty analysis and its mania for facts with some sort of constructive synthesis. The search for facts destroys the facts it hopes to find, and it does it by imposing in advance on the facts the qualities and characters which are native to its own subjective processes only, and which it requires them to have when found. The fact is what is at hand—*factum*. Both from the point of view of mental state and its expression in objective form the method leads to absurdity. Then the researchers swear at, or by, metaphysics; and, having created a bad instance of it, assert that there is no such thing, or that the bad instance is the real. But it is not necessary to renounce either facts or metaphysics just because they will not agree in advance with our sacred theories, which, by the way, have become sacred because they have been inherited and have cost us nothing.

On ordinary psychological assumptions then there seems no ground for the self or individuality considered as an inner 'spiritual' essence. The assumption of such an inner entity comes to grief either in the blank and abstract awareness of mental states taken by themselves, or in the equally false notion of the entitative finality of organic movement. In the one case James is right in questioning the existence of consciousness, and in the other Hume is right in showing that the self can not be found as sensible fact.

There is the easy way out of these psychological difficulties by assuming that the sense-fact and its movement, the mental state and its action, the idea and its deed, are 'two sides' of the same thing, and that individuality is somehow involved with these 'sides.' Then when we are in difficulty, say, in metaphysics, we can walk around the shield and demonstrate—dramatically. One fact is x and the other y , and these are explained by referring them both (but one at a time) to z . When I am concerned with x , then z is the shield which hides y from view and I am able to forget it. And I can stand in the high priori plane parallel with the shield and forget both x and y and talk metaphysics about z . I can specify one at the expense of the other, and if x and y are life facts, they will on occasion each or together drop behind the 'social' shield, z , and if my diction is florid and extensive I can talk sociology. And by using a little rougher language I can become a publicist. But it is a much more arduous task to see the fact as unity, to see the fact as a whole and as not disappearing in its special aspects of quality and quantity or in some rhetorical symbol of these which strikes our interest or fancy. And it is still more difficult, in this day of self-assertiveness, to see the fact as unity and not confuse its essential and natural harmony with my demand for its modification in the way and after the plan of my specialized interests. It is the factual unity of life objectively independent of our interests which is the original ground of our having an interest at all. *How* facts *get* into the unity which they express or which expresses them (the meanings are the same) is the ultimate mystery just because it has no meaning at all—is unintelligible as are questions of ultimate origin. How mind and body incorporate in the same life functions and life-ends is a ques-

tion which has no meaning. And the cheap and easy identity of "two sides" does not constitute an explanation of the fact of unity in experience, any more than does the psychological attempt to force consciousness and movement into the same mould. Then the psychological real of experience, the reflex arc, ideo-motor action, motive-intention, is an integrity of fact, and there is nothing gained either by regarding the integer as a sum or result or product, or as a plurality of severable factors. It is what it immediately is—primarily and in its lowest terms an esthetic fulfillment of what as empty undesignated quality would be called a sensation. But there is no sensation apart from its unity, and no *factum* except the act which is the assent of the consciousness to its own finality as unity in an objectified whole. It is a psychological absolute, which you can write with a capital until its possible repetition raises a question about it. And as absolute it represents a fulcral or criteriological function with reference to the questions which it itself raises. You can start from it and go anywhere—everywhere within mind, so long as you follow methods of science. It tells you that in no direction can there be found its other as what is oppositely different *from* it in kind, but that in all directions there is its other which appositely differs *with* it within its kind. Differences from it are abstracted differences within it, and as abstracted can be made to appear to reconstruct a factual whole or integrity just because the differences, when completely abstracted, disappear in bald homogeneity. It is then the integrity of the whole which gives to severed differences such concreteness as they have, and when the concreteness becomes important as a value it transforms differences at once into integrity, i. e., the dependableness and permanence of objects of reason, with the necessity or persistence of objects of sense, which is the existential basis of every fact. The clear illustration is of course the esthetic experience, and this, as the highest of experience forms, is the Aristotelian 'nature' as entelechy which we seek behind all appearance. Witness the ultimate satisfaction or satisfactoriness, the felt harmony of conscious intent with realized end, which willy nilly becomes the point of ultimate reference in moral experience, and the final problem for ethical theory. The real is, then, for psychology as for all other interests, the integrity of fact which

contains its own end, and which ends in itself. To avoid the charge of staticism, let us say that the real is the harmony of fact with the end which through growth the fact becomes, and which can be instanced in any complete moral or esthetic experience. This of course sounds like putting the screws onto differences until by compression they become indistinguishable; but it is really an effort to provide for the active energy involved in difference and at the same time maintain the order and dependableness in fact which is necessary for continuity in experience. And the two motives, order and growth are the grounds of all the characters which the real possesses. This tendency to self-realization through growth is taken as the type of the real, and its final form for practical purposes is will. It is therefore in a theory of the will that any doctrine of individuality must issue.

III. INDIVIDUALITY AS A FACT OF GROWTH

Applying these considerations to the psychology of human individuality, we get important results. The idea (using the term in its large generic sense to cover all types of mental fact) is an integer of fact which contains its own end in the act which maintains and expands the ordered integrity which is itself. It is a case or instance of *self-expression*. As was said, its nature is best and clearest seen in esthetic experience, which, contrary to accepted tradition, is not to be regarded as the antithesis to the logic of intellectual experience but as the fully formed and integrated whole which logical experience always implies as end. Satisfactoriness in this case becomes consistency. But as to the psychological aspects of the real as idea. And first as to what is meant by integrity of fact. From the point of view of detail, this is the total complex of distinguishable qualities and substances, which are qualities universalized, into which experience falls through analysis. Any detail is then, psychologically, whatever can get the attention and can hold it as against or in conjunction with any other applicant, the failure to hold attention being regarded as the sign of the illusory and unreal, i. e., as what is not dependable in the sense that it will stay put neither for thought nor for sense. But immediacy or mere abstract 'consciousness' is not the test in either case, for both thought and

sense require the help of past experience. All of these details taken together constitute the content of consciousness at a given time, but this does not restrict the factual situation to mere present sensuous data. In exactly the same sense that fact is present in sensation, fact is also present in the form of image of memory. What in the one case is the present to sense is in the other the immediate to thought. That is, all the fact of the past functions in experience as the ground upon which the novelty of the present forms itself as end. The past is the history of the present existing in the present, the present the purposed end of that history. The end as conscious idea is then within the fact itself, is the fact itself in the final stages of its growth toward a final or ended integrity.

It is nonsense to require that these stages should not be simultaneous. For example, the detail of fact in my mind now is the paper, the table, the pipe, etc. of the focus, together with the fringe represented by all that by the laws of optics falls within my field of vision. But along with the visual aspects are certain sounds, and certain feels affecting various parts of my body. But each distinguishable sensation in each field is itself an end to the sensation facts which make up its history, both in the sense of a summary of those historic facts and as their culmination in meaning. And it is this "apperceiving mass" which constitutes the consciousness as distinct from the present objectivity of fact of which we are conscious. But once more, the two are merely 'distinguishable,' and not 'separable.' Now these details of fact are seen not to be contingent or accidental in the sense that they might have been otherwise in their interrelations, but their history makes them have the relations which they do have, their history being what it is. There is therefore a degree of ordered permanency within the inner facts which depends upon the partial integration effected as a meaning by their history, and this *partial* order may be explained psychologically by association.

This is perhaps the place to show, parenthetically, the real status and limitations of association as a law of mental life.

Association can show the factual connections which are present, and can classify types of connection in such a way as to compare one 'mind' or one fact with another, thus laying a claim to the universality and objectivity of science. In fact, association can explain much or most of the factual aspects

of mental life, but the difficulty comes from the presupposition which association always implies, viz., that the facts which in their existence are separate details, imply a character through the active agency of which their separateness is overcome, so that they can be regarded in their distinctness at the same time that they may be taken as a unity. The difficulty is not that association is wrong principle (i. e., principle that is false per se) but that it is one which does not exhaust, or cannot apply to all the facts; if made to apply to all the facts, then, since all the facts will not compromise or accommodate themselves to outside requirements, the principle would itself have to develop into something other than association, say, e. g., mechanical, i. e., forcible, integration or combination. Not all the facts in the situation are taken into consideration by associationist psychology, those that are not amenable to the law of association being neglected until the necessities of consistency force them under the law. Then we have the unintentional and inadvertent mutilation of fact which is the bane of science—the only circumstance that under any conditions can impose a limitation upon science since the very law of experimental or empirical science is process. And deliverance from abstract process does not dictate that science in such a case as abstract continuity needs *more* facts or *all* the facts, but *all of the fact*—that it must be honest with the facts that it has. It is in this predicament that psychology through association begins to put the emphasis upon the inner character of the facts, and we get the false distinction of inner and outer and the bad metaphysics of subjectivism which comes from outraged fact. And it is at this point that psychology fails in its unimaginativeness to find a satisfactory account of imagination, and thus an outlet into the light of objective fact. Association, consequently, permits of no realization of ends; and as the realization of ends is the essence of ideas, “association of ideas” is a contradiction in terms.

The elements of fact described above as the past history of a former, i. e., since time is abstract difference, merely a different sensuous immediacy, together with the sensational immediacy of the present, do not exhaust the whole of integrity of fact which I have described as mind. They represent what is inner and private and integrated under principles which fail of universality. The integrity of fact is still partial, lacks

complete independence, and is as such unprincipled. It will become principled or individuated only after complete description. This means not merely that "all the facts" be considered but that the integrity of fact be not mutilated by inadequate principles. The reflective or idea-end concept, as an integer or whole displaying diversity of function, represents elements of principle. The diversity of function means that there are dynamic or growth differences distinguishable in the idea. And by growth differences we mean that widely separated temporally determined stages in the idea's reality are present at once in the whole considered as idea. And this means that as dynamic the idea is not limited to quantitatively determined aspects of the object, and that, since time is 'simple' and therefore quantitative in its objective effects, a number of divergent times are simultaneously present in the idea, and the idea can apprehend the object as *now* within a number of temporally different stages of growth. The end is *now* comprehensible within the growth process. Then growth makes the apprehending (since comprehensibility means both cognitive awareness and objective inclusiveness) act constitutive in that the act as principled universally becomes the constitutional law of the object or end to which the act leads. It is thus that we say that values are "timeless," not that time is not existentially important in the constitution of value, but that the constitution of value once apprehended, the value becomes an integrity of fact in which its structural history is not shown by the seams between the 'parts,' but is shown by the final symmetry of its total meaning. The value is individuated, not constructed; and that is why art is the product of genius rather than of skill; and perhaps also why much art is ruined by its technique.

Individuality implies, then, both the creativeness of the growth-act and the completedness of the created end as the variety within which its unity holds as law. This principle is illustrated in any simple living fact of nature, any object which possesses a growth history. The 'reflex arc' is, then, an act, not a movement but an idea. It is an instance of movement *and* action; and as such is freed from temporal and quantitative determinations, not because the latter are unreal but because they as imperfect law are contained *within* the act as

elements of its own constitution. It is therefore not a mere physical or physiological movement, since the latter is physical because temporal and quantitative determinations are its constitutional law. And further, these elements are constitutional and not structural, they relate to the law of the act, and not to its material or to the energy through which it is expressed. The reflex arc then, if it is to be given any philosophical value, must be regarded as a whole of fact above and beyond the distinction of mind and body, inner and outer. Our problem then becomes one of showing how the temporally and quantitatively determined physiological elements become internally or functionally constitutional to the idea as logically individuated. We must avoid the structural point of view with its constructionist fallacies, and also steer clear of the materialism of biological science. We may take the reflex arc or idea-end thus interpreted as the type of the real. It must be emphasized again that what has been described above as an *act*, whether as the expression of biological or neural energy, or merely as an 'act of mind,' is partial and subjective and as such not completely or logically individuated and therefore not real; for as biological or neural, the objects which the act involves are the instruments or means *through* which it is expressed, and not the ends *in* which it ends itself or comes to its own fulness as a universal. As mere act, therefore, it is pure subjectivity. As instruments, the objects make the act repeats itself indefinitely in its others, make it a repetitive process *ad infinitum* within a series of physiological causes. But this instrumentalism is infinite process, and "gets nowhere." It is for this reason that psychology is for the most part false to the facts, or, insofar as it is true, is true as descriptive of organic functions only. As descriptive of temporal and quantitative aspects of fact, it is limited to content, and while content may be "mental" as well as organic, it is in either case subjective in that it conceives its facts in their isolated and repetitive relations. It is for this reason that psychology can be regarded as a 'natural' science in which the real has a low and prelogical individuation through the principle of causation. This limitation carries over to sociology (Ch. I), and gives the illusory sense of plausibility to such conceptions as the group mind regarded as somehow a combination or integration of minds partially individuated through

their historical and anthropological characters. And this means that *psychology in its present state is no adequate ground for a science of society*, or that the science of society based upon psychology alone, or upon the natural sciences taken together, involves a distortion of human nature. The same is to be said of the psychologists in economic theory. Their resulting 'mind' is merely the group of physical or animal wants, and these wants are individuated only to the extent of involving a material principle of wealth or property. Then the economic interpretation of history is unavoidable, and economic theory insofar as political economy is to be regarded as a science, becomes merely a description of the system of technical means through which wants are satisfied through production and aggregation of property. It thus separates economic thought from ethical considerations, and from all principles that are regulative of life, by failure to establish itself on the principles that are constitutional of life. Sociology and economics thus are 'subjective' in that they only partially apprehend the integrity of fact which gives life its objectivity and universality. It is therefore not a question of the failure of these disciplines to become sciences, but rather a question of their being too literally scientific as resting on causation and making no reference of their subject-matters to logical ground in *human* nature. But a similar charge may be maintained against the rationalist insistence upon 'thought' and 'ideas,' in that these become abstract by isolation in their purity, and hence subjective. So the idealist's lapse into subjectivism and the empiricist's running amuck in scientism are instances of the same fallacy of oversimplification and isolation, which mean in both cases the adoption of the idea of distinctness as the principle of individuation.

IV. INDIVIDUALITY AS OBJECT

Coming back once more to the reflex as the suggestive type of most simply individuated fact, let us now give attention to its outer and extra-mental aspects. As the question was stated above, how do the temporally and quantitatively determined physiological elements become internally or functionally constitutional to the idea as logically individuated? I have spoken above of the act which is ended or completed

in its deed. The difficulty of avoiding mere rhetoric here is recognized. We have already seen that mental life is continuous and unified in the sense that any act of mind is the act of the whole mind. The mind is then not a hodge-podge of severable functions of sensation, perception, reason, etc., but as a whole acts in one connection as sensation and in other connections as perception, memory, imagination, etc. It takes all the mind I have to see, perceive, imagine, think, etc. But this means that different functional names are given to the unity of mind as that unity perfects itself successively through stages of its progress toward the end of accomplishing its full nature. By this I do not mean to accept any of the current forms of 'actionism,' but merely assert that the mind through its activity constitutes itself, makes itself up, with reference to the final stage of its completion in overt fact, the ordinary name for which is the object. Then mind or thought contains within itself its object at every stage of its organization, and the stages are distinguishable as the various degrees of integrity or wholeness of organization which the object manifests at different views. But the growth of the object implies that the principle of the object is apprehensible in its continuity, hence the integrity of the object is maintained against the tendency to the separate individuation of any of its stages. The perfection of the tendency to separate individuation by any stage is the change of attention or direction of purpose toward the beginning of production of a new object, in the case the new object is completely materialized it is the product of the organic process of reproduction. Thus the real content of the idea turns out to be its finished forms in the shape of the objects of experience, and the physiological elements are the structural components in a real whose logical individuation implicates them with growth tendencies in a whole realizing itself as end.

On the analogy of the reflex, then, the object is *the idea issued* or come to its acknowledged will and deed. It is the soul of form given its body of fact. It is, e. g., the impulse (of beauty, etc.) precipitated as art. But to reduce this rhetoric to the technique of the real, the integrity of fact requires the recognition of the external as the content of the formal or inner; and without this content the inner volatilizes in pure 'idea,' just as in the absence of the *intent* as the formative or

organizing principle of integration, the *content* becomes inert and inane matter. On the one hand the result is the philosophy of pure abstract purposiveness, and on the other the equally abstract materialistic positivism of science. The reflex-arc states that an 'impulse' takes its origin in a sense-contact, flows through a mediating 'central' organ where it is given ordered direction, and issues in a muscular or glandular response. Empirical psychology has much fine sport in building up around this simple fact a psychophysical parallelism and a psychobiological organism. But in substance it is merely a factual statement of the unity of consciousness—environment characters in their dynamic or growth relations, so stated as to imply presence in each instance of those characters of the history which are the explanation of the instance and the further history which is to be its valuation. It simply states that idea and its object are there, mutually organic to the meaning of the present experience. The idea I have in my mind then is simply a form or stage of what will be through the rational process of adaptation of means (the interpolation of intervening stages) an object as a purpose *stated*. The process implies of course all sorts of 'given' materials, given in the sense that their relation to my present idea does not indicate the end but a possible means. But another and different idea would make what is now end into a mere given means, or a given means into an end, by a mere change of relations. This is what is meant by an act. So are relations internal and constitutional. I have in my mind a table. It is now, as merely *in* my mind, a subjective and psychological state. The psychologist could describe its qualities and attributes, and relate it quantitatively to other conscious states by the abstract method of association. And that would be interesting; and in certain more or less unimportant connections it might be important. But his description would bear little resemblance to my real idea, the table. This idea is there as the present meaning of the historic uses (which may be cognitive or theoretical as well as practical uses) I have made of tables, or of the esthetic or cognitive appreciation I have experienced of tables, all this as organized now in my experience as a plan of further acts or values which, by the way, as merely "in my mind," carries no necessity as yet of its being carried out objectively in sensible forms. But in so far

it is merely subjective and private, no one but me can as yet use this table. But expression in language will make it cognitively usable by any mind that understands my language, and thus give the table logical objectivity and as much substantiality as if it were executed in wood. But my past experiences of table in their utilitarian or artisan and artistic senses as they come to me *now* are elements of the idea in the dynamic sense that they are suffused with desire and will, so that my idea becomes an *ideal* or plan of a table adapted to my present or future uses both cognitive and practical. But it is yet, as depending on *my* history, strictly *my* idea, private and subjective and unreal and unindividuated or unprincipled, for it may never materialize and will not so long as appropriate given data are not at hand as means through which it may *end* itself. It thus may become the never-ended or unrealized goal which may have no form but my pathological yearning. That is, it may repeat itself indefinitely as a 'mental' state, the abstraction of the psychologists. But the presence of appropriate given external matter, that is, elements of the situation hitherto uninteresting, furnishes the point about which the dynamic or growth efficacy of the idea begins to crystallize a content, and this efficacy (efficacy, that is, simply as a propulsive *factual* arrangement within a situation of fact, not energy as a mystical creative force) expressed through organic activity gives me the *real* table. That is, a 'given' of wood, tools, time, physical strength, and knowledge or experience of tables, which is also equally 'material,' creates the table as real. The table is real then only in the *wood*, etc., and the wood, etc., become the content of my idea, the stuff of which ideas are made. If not this, then what does objectivity mean? The attempt to create the object as universal out of subjective factors of habit, instinct, etc., will work if only one can make these states 'social.' The 'social problem' arises therefore out of the irrational situation created by the breaking up of the individuality into these subjective factors. But you cannot build up the object out of inner and private and subjective factors, in the absence of real and inert non-mental factors with whatever magic may be derived from 'social.' The idea of 'social' is in need of objectification just as is any other abstract relation.

Material existence as data or means is then objective mind.

And it is material existence only when and in so far as it is sundered from real relations to mind. It is suggested that 'knowing' may be such a real relation, so that the process of cognition is constitutive. My idea of table is then the *table* as the end of a system of means chosen because of their appropriateness to the end as foreseen and desired. It is the table which I make, buy, use, enjoy, i. e., the practical table. For this reason the science proper to its description is that of positive law, and the concept which most fully represents the reality of the table is that of property. But the law of property is an element in constitutional law, a question of the principle of the whole. The full and adequate account of real things then is the philosophy of law as dealing with the principles of ultimate system. The table is thus the end of the system of means which is determined by the context of my history and the content of the data, which is the particular system of means that makes it the object of *my* idea. And it is the dynamic ordering of specific or universalized context and data, of history and matter, that makes it my *idea*. A different context, data, or ordering growth-efficacy, will make of the same table *your* table, your *table*, or your *idea* of table. And this indifference of reference to means is the mutuality of claim to individuation in different stages or forms, which is the objectivity or universality of table—the principle of individuation which makes the dynamic order of historic data into a real table.

V. INDIVIDUALITY AS PRINCIPLE

The preceding discussion of the principle of individuation operating towards issue in the realization of ideas is a purely descriptive account of fact. The same description as interested in and with emphasis upon the processes whereby facts as actuality become reality would be a description of will. Pushing the description to the point of displaying the cosmic aspects of the relations would give an account of the social or general will, and thus lay the ground for social theory.

Thus the content of mind is external to the mind. And this is true whether content is considered either as collections or as complexes or syntheses of habits or instincts or action-tendencies or any other partial or whole list of inner functions.

It is suggested that inner *means* partial, and that there would be no suspicion of a mystical ultimate inner except for the partiality of emphasis given to specialized situations by specialized interests. The same situations specified, or referred to species or principle, would be objective and outer. What is behind the vague concept of active agency or productive or efficient cause or will is perhaps just the undefinedness of a situation of fact whose total status is not clearly understood. It is this vagueness which creates and peoples the "spiritual" world. As such indefiniteness it carries the urge toward definition of form, the feeling that the completion of the undefined situation is to be looked for in the progress of delimitation of fact in the course of nature in the one case or in human action in the other. As Hume suggested, cause may be merely the expectancy that the present situation will clear itself up, an expectancy based on the fact that situations do clear up as elements of fact come to definition. This idea of Hume's is clearly a confusion of cause and will, but it is questionable whether the two ideas can be kept distinct. Such a conception is superior to that later developed in inductive logic, namely, the invariable sequence and repetition of fact considered from the point of view of what is past, if by superiority we mean faithfulness to fact as presented. For the urge of expectancy is certainly there as fact, and can be neglected only by a post-mortem view of the facts considered as completed *in time alone*—the point of view that science tends inevitably to take. The concept of creative agency will not down even under the influence of the stubbornness of scientific fact; but it is only our ignorance that makes mystery of it. In actual fact, my 'mind' as inner awareness appears not in the ordinary processes of dealing with properly individuated or objectified ideas, but only in cases where my interests as desires have become narrowly specialized and are not yet completely or ideally objectified. Mind appears then as will in process of self-completion. In the larger, i. e., more real, clearly objectified situation I 'forget' myself; I do not appear in a properly objectified interest; such for example as the purely esthetic or the logical interest; the interest is already ended or rounded out in the appropriateness of the system of its means, and if I appear my appearance indicates a maladaptation of parts or a faulty ordering of elements within the whole.

The emphasis then is ordinarily upon the objective or non-immediate and logical aspects of ideas. The 'state of mind' or inner process is as nothing until something is or happens which can be related to something else that is or happens, that is, until the state of mind is *stated* as fact.

The relation to a mere knower also, if considered by itself and unmediated by relation to other facts and relations as objective, is a pure abstraction. This means that knowing is itself not an isolable thing but is dependent upon the existence of something known as fact, upon the objectification of a previous act of knowing as the historic ground of the present function. These historic grounds are the things of experience, the objects of nature. My mind is real then, as a cognitive function, as the synthesis of the matter of fact things of the environment. I, as individuality, am the tangled clot of existent and valued elements which are, as spatially and temporally ordered, the facts of nature. The content of my mind in the cognitive relation is the sum of the things I use, enjoy, make, sell, steal, hope for, 'know,' love, etc., the *same* 'material' things which my neighbor uses, enjoys, knows, etc. And my content includes my neighbor and his ends, as I with my content am included in him. The form of my mind is just these same things integrated to wholeness by the mediation of just these relations. This mutuality of *things* then is the 'me,' and as centered about a particularized but still universal use, enjoyment, etc., is the 'I.' But as thus centered it may also be centered at the same time in as many other different persons as there are types of particularized uses, enjoyments, etc., without in any way detracting from its universality. The principle then which objectifies or individuates is just the mutuality or indifference of reference of fact to the mode of organization or concentration. And the concentration of mutual fact is the essence of society. The eccentric is the unreal. And the attempt to isolate the using, enjoying, knowing, etc., from the self-referrent integrity of the whole is the fallacy of subjectivism. This is behind Professor Dewey's tremendous attempt to make habits, instincts, etc., 'social.' He sees that there is no private possession by abstract personalities of habits and instincts, the habits and instincts as objective rather possess their supposed owner. And it is this abstract universalization or socialization of habits and instincts which makes

him struggle so hard to show that habit, e. g., is 'executive' or spontaneous, which he never quite succeeds in doing just because the habituated individual is always dominated by 'specificity,' which, to him, is particularity. And he cannot do it for the reason that he is still apparently obsessed with the idea that we must start with habits as given (which is already subjectivism) and then build up to the qualities of habits as organized modes; that we must accept habit as a given and then 'attribute'¹ to it the qualities or properties of spontaneity and mutuality or publicity. But mutuality cannot be made an element of the hypothesis which starts from habit; something more substantial must be the hypothetical ground of the relation of mutuality. Habit is a psychological presupposition; mutuality is logical. The quality of spontaneity will have to be 'got' so long as we take habit as the ultimate datum; and the 'getting' is purely gratuitous and made necessary because of the assumption that habits are self-subsistent entities, and thus the ultimate simples whose complexity can be built up only by quantitative repetition. But in this way the executive property of habit is in contradiction with the habit's nature. It is *habit* that is given, not habits. It is once more the subjectivism of the 'inner,' and is not overcome by the attempt at objectification through the organism, or through psychological mechanism, or through the attribution of qualities.

But, once more, the reality is the idea-fact situation as individuated through its mutuality. The state of mind as such is nothing until it invests itself with its end in the community of nature. It must carry itself *out* outwardly in the overt fact; as it remains covert it is incapacitated in that it fails of contact in the universal; it acquires capacity only through the coverture of the environmental situation which is its end. The inner is simply the tendency to particularization, the incantation of growth-efficacy denied appropriate means to end itself. That there be appropriate means to full public or out-

¹ It is not quite clear whether Professor Dewey means by the executive trait of habit real spontaneity, or just the weight of inertia of mass process, the idea of habit as the limit to change of life-modes. If he means the former, then he is using ordinary words in the direct opposites of their accepted meanings; if the latter, then executiveness implies no more than an abstract capacity which can never become active without negating that to which the capacity is attributed.

ward completeness precludes the appropriation of means by such inward reference to a private uniqueness. This, the existence of, and full and free access and opportunity to, adequate and appropriate means to objective wholeness, is the ground of the ethical right in practical life, just as it is the ground of objective reality in the theoretical. The principle is the mutuality or indifference of means (in ethics we would say the free and public opportunity to the means to significant ends) to the types of ends which they will compass. This makes the basis of possibility for error and evil. And the constitutive motive implied in directing the employment of means to positive ends becomes the constructive and redemptive purpose in the normative sciences, which are headed in the one aspect by ethics and in the other by law. The question is not therefore how the 'acts' of mind *become* objective, but in what and through what overt and universalized forms they *are* objective. Mind is objective because its content is outside itself—the mind is the objective purpose expressed in and through things, not specially refined types of things, e. g., logical syllogisms or habituated uses, but the thing that is, the thing, it may be, that existentially presents itself as mere possibility and rawness. The most perfect tool and the most beautiful art are those closest to nature; 'improved' tools and 'refined' art are unnatural and so unreal. As 'refined,' art is an idea and subjective, not a thing; as a means it is *crude*, a thing which is not yet but becomes refined through ideation. And the totality of such crudities which make up nature is the stuff of minds. The world is my idea. My mind, for example, is the sort of thing that you would expect from the sorts of thing that interest me. I am what my pencil, my pipe, my hoe, my pocket-knife, my books, my wife, my god, my associates and friends, the public instruments I want to use or have to use, make me. Not of course in the crude causative sense, but in the sense that the sum of enumerable means which I use indifferently (publicly) constitute me; I concentrate them and thus individuate them as the stuff of my personality; I am *their* personality; but they, concentrated about another reference point, become the stuff of another personality within which I am a detail—an important one, to be sure, since I am individuated by the same principle as he. We therefore 'use' each other in the forbidden Kantian sense.

But the detail of means is indifferent as to the points around which it concentrates, and the same objective stuff may be centered about an indefinite number of points of individuation *at the same time*. This latter, this indifference of reality to individuation about an indefinite number of centers, by virtue of which the quantitative aspects of the real become negligible, and permit the personality to be defined in terms of values, is the ground of fact which constitutes society in the case of persons, as also of the various forms of corporate reality within the social whole.

VI. INDIVIDUALITY AS CORPORATE

It is thus that the transition is made by insensible degrees from individuality as uniqueness through the various modes of objectification to the forms of corporate or social individuality. The presupposition which makes the transition possible is, that mind as such is corporate or embodied, whether in the individual or in the social or plural sense. Social reality is then merely an extension of the principle of individual corporate organization. Upon the adoption of this principle the way is pointed out whereby the apparent incommensurability between the individual and the social is overcome. The principle enables us to see that social reality is continuous with and a continuation of the reality as individual, and that the individual-social conflict arises because of a mistaken conception of the type of ends that are appropriate to the means that are given in nature.

This deduction of the individual-social relation indicates that the degree and quality of mind will depend upon the nature and extent of fact to which that relation gives ordered form. As such ordered form or will it is the personality of a fact complex. But it is to be remembered of course that the order and form are not superimposed upon the extent of fact by a mind existing in isolation. The mind as the ground upon which ideas realize themselves as will, is the constitution of fact as order. The mind is the constitutional law of the facts, and this presupposes a degree of order as original. But this merely denies any ultimate distinction between mind and fact. The question as to how order begins indicates a misapprehension of the nature of order. Hence order and fact

are presuppositions, and mind is the type of order which is original, or is original as type. As facts differ in quality and order minds will differ, and the nature of the differences of quality and order is the criterion of minds. But as quality is a specialization of ordered form the criterion of minds is order. And it is to be kept in mind that the distinction between internal and external has disappeared as unreal, being the attempt to make a distinction within abstract distinctness, while all real distinction is distinction of things. The stuff or content of a mind is then the totality of things which are ordered indifferently, and which are therefore the stuff of minds without reference to the specialized center of any mind. This is the objectivity of fact as real. It suggests also that, along with the internal-external relation of mental content, the question of the relation of inclusion or exclusion of content disappears equally. The question of the nature and status of minds then is the question of fact considered with reference to a metaphysic of mind, since the metaphysical aspects of the question are anticipated in the result that mind is a matter of ordered fact. This is a metaphysical result in that mind is itself the only principle of ultimate order. It is not, therefore, necessary to specify the kind of order, since order as mind is a priori comprehensive of all distinctions of kind. The analysis of the world of fact as objective mind gives us the key to the *type* of mind involved in any relation, since it is the most comprehensive of fact orders both extensionally and qualitatively which we regard as the ultimate end as value. Thus the entelechy of nature is a type of mind, and nature is understood when referred to that type of mind which is nature's order.

The question of Individuality has so far been a question of *mind as order*; it consists primarily of a critical destruction of 'individualism' in the demonstration that the facts cannot attain reality of order under the false pretense to principle which subjectivity claims. The problem of individuality as social becomes then the constructive demonstration of the *order of minds* and a formulation of the principle of that order.

We have seen that human nature in one stage of its development in comprehensiveness attains its end in what we have called the socialized mind. The *socius* as mass regularity is

in this case the criterion; it implies the comprehension of multiform fact under the negative law of distinctionlessness. This is the type of mind as dominated by mass regularity, the mind which sustains itself by repetition of itself, and lives in the circle which returns inevitably to itself in imitation and custom. The modern attempt to resurrect the idea of mind criterioned by such conceptions considered as an ideal end for present nature and as the order of human nature, is therefore the hopeless attempt to reduce nature to lower terms, to reverse the direction of growth-process toward stages which it has already passed. It is the mistake which sees the meaning of history in the backward reference to example and precedent, the mistake which becomes engrained in our prejudices about a golden age and a good old time. It is the demand that life submit to dead formulae and order congealed in fixity. So the attempt at the 'socialization of mind' about the fixed causal principles of stability in custom and precedent, is a vain ideal. And a sociology which hopes for a complete understanding of mind as functioning in its real environment, an understanding achieved through the causo-mechanical principles of scientific method, is already defeated. Such an attempt will inevitably become the death warrant for the science of humanity, and in so far as it takes hold upon minds dominated by human interests, will destroy the very science of life and the life of which that science is the proper account. The socialized mind has passed; the environment which was its content has come and gone and will not return. To attempt its resurrection will merely end with the suffocation of the mind that is.

We saw also that a similar result had to be recorded with reference to the individualized mind. The individualized mind we found to be individuated about itself and its own distinctness as its principle, and that, we saw, to involve the absolute dispersion of individuals which makes life, even in its lowest terms, impossible. Its result with reference to relations of individuals is the hypostasis or apotheosis of strife, and one of the saddest bits of human asininity is the spectacle of a society built upon competition and individual rights trying to avoid its own destruction by seeking methods of "humanizing" war. The individualized mind as mind dispersed to absolute and multiple particularity, is self-contradictory. We

saw the guaranty of what such a view regards as its reals—individual dignity and worth, rights as exclusive, obligation as force, law as compulsion—to be nothing more than the abstract aloofness and detachedness of these reals. And just as the principle of distinction meant for the socialized mind the utter disappearance of difference, so in the case of the individualized mind distinction means the complete abolition of everything but abstract difference, difference in the absolute with no point of reference. It therefore makes the mistake of taking distinction as the real instead of the things distinguished. And we saw that neither the socialized mind nor the individualized mind is the human mind which we know now as manifest in our practical relations and obligations.

Then the principle of individuality or of individuation for the life of the present is the supreme desideratum. And our problem at this point is to show how the foregoing considerations about mind in general become the foundation of the concrete expression of mind in political and practical institutions generally. So far we have considered mind as objectified in the universal as law; it is now necessary to show how mind becomes objectified in the concrete as individuality. The transition from mind as law to mind as concrete individuality is effected through the theory of practical relations as the medium through which purpose becomes objectified in institution. The transition is first stated as from specialized subjective personal relations to mutualized relations in common action.

That which creates the necessity for such a principle of individuation should also furnish the suggestions upon which the principle is to be found. The necessity for the conscious formulation of the principle is the apparent (or real) permanent disorder in the outward life of man. It appeared above that a degree of order is among the essential presuppositions, is essential to the idea of the mere existence of fact. Order, without specification of degree, is in very truth the ultimate fact itself. The question for example as to the origin of the state as a human order, is answered at once in Aristotle's dictum that the state is natural. The pains to which the contract theorists go to explain the detail as to how it got formed out of concourse or conscious or unconscious coming together of minds makes one of the interesting cases where a figure of speech has obscured the truth. The state

as natural order has an origin in the assent of minds, which is nothing more than a statement that the essence of mind is order, but that is vastly different from the ordinary meaning of contract, as we shall show later on. 'Contract' merely means that the public or universal mind or mind as law assents to or automatically adapts itself to an order which has grown up in nature unconsciously. Contract is at best then an abstract presupposition, and its significance will depend upon the concrete deductions that can be made under it. The mind becomes self-conscious and concretely individuated through the discovery of its own external form in political institutions. Its recognition of that form as natural and its own proper form is the ground of positive law as the principle of freedom.

VII. CORPORATE INDIVIDUALITY AS THE HIGHER PERSONALITY

If we begin by reviewing the state of fact which is before us constantly, not to deplore its disorder or to celebrate a fancied order which is imposed by the imagination, we shall have to reflect that the very disorder which we see is not so much the confusion of multiple personal interests in conflict, as individualism would have it, but the cross-reference of function and mutual interference of the various institutions through which objective or universal human purposes are intended to get expression. Unrest is due to unsatisfied desire, from the psychological viewpoint, and unsatisfied desire is due not to a metaphysically wrong or bad character, as the old ethical teaching would have it, but to the lack of appropriate means through which desire may be expressed or realized in its end. If 'Freudianism' can be credited with anything, it is with the truth that the sanity and wholesomeness of desire is dependent upon adequate and full expression, and to this it must be added that the adequate and full expression is a matter of appropriateness of external means and opportunities of action. The presence of these means in adequate form, not, of course, with reference to desire but to the whole realm of ideas, is freedom, opportunity. It is true that if we look for detail in the confusion in practical life, what we see is a conflict between x and y , who have disagreed over differences of "individual" interests. But if we take x and y into court and

happen to get an intelligent analysis of the difficulty, it will turn out that what appears as "individual" interests in conflict are really the functions of institutions in conflict, as, *e. g.*, the institution of private property with the educational institution. These so-called individual interests are then really *personal* interests, and when recognized as such they appear as the functions of real persons of a higher nature, among which such frictions as occur become objective problems of justice and of the law rendered impersonally or disinterestedly. That is, these individual interests, when seen whole, are the functional relations of institutions. And in most cases of this sort the institutions can with a little reflective consideration be named, *e. g.*, it is not the property interest of x in conflict with the property interest of y , but the institution of property as it expresses itself in the acts of x and y and as it gives a bent to the minds of x and y , running at cross purposes with, say, public welfare or education as a public function. The same conflict may and often does occur within the experience of either x or y without directly involving the other. Then it is not the individual x and the individual y who are contestants before the law, but the institution of property and the institution of commonwealth. This is the meaning of the law as administrated impersonally. It is always institutions that are on trial for their life. Yet we punish x and y as 'bad,' and attribute the whole mass of unfortunate results to ill will and a depraved metaphysical character. The badness proceeds, we say in our theories of politics and ethics, from an ultimate source in the 'inner' being of the individual, comes from a perverted 'nature' or a 'simple and undecomposable' soul perverted by the essential badness of nature, or, as a later scientific method, we attribute social conflicts to individual wants or desires considered as necessary by-products of the process of evolution. But from a study of any of the larger questions of public life a different conclusion must be reached: the unsatisfactoriness of outward life is due to the inadequacy of the means to full expression of desire rather than to the innate badness or to any quality of natural persons taken singly or collectively. And this desire itself may very well be interpreted as the "will tendency" of an institution considered as a corporate person, hence as objective. This point will come up later. If it be argued that *full* expression

of desire is what is meant by wrong and that desire is to be curbed, the answer is that excess of expression of desire in one direction is due to the desire being curbed in another direction. The natural function of desire is the case where adequate expression leads to satisfaction, i. e., the desire is 'ended' in its own completeness. But the curbing or half-satisfaction leads to the infinite process of stimulating desire for the sake of its own satisfaction, which is due to the fact that, because directed upon an improper object, desire is never satisfied. It is curious that rationalists and hedonists have common pre-suppositions here. In any case, a study of the facts of the inner life of desire drives us to issue with a consideration of objects as the ended forms of what in a lower stage is subjective desire, since only these object forms are mutually experienceable. Social questions are therefore not intelligible when stated in terms of individual desires. Desire is of theoretical importance in any case only when regarded as objective "will tendency," and as such it is appropriately described as an attribute of public institutions.

And a system of such objects organized with reference to the working out of a larger purpose in the mutual activity of persons is what we mean by an institution. Such an order, grown up about and incorporating the experiences of feeling in a system of simple objects and processes, while as yet not self-conscious but 'instinctive,' is the habit-imitation system or institution of the primitive group of early sociology. The transition from this status, through the conscious recognition of the system, to a system of means or instruments assented to in the interest of purpose, is the ground of the question of the origin of the political state. But it is clear that institutions, as generalized means to *types* of ends, are prior to the state in the historical sense. It is as a system of these pre-political institutions that the state is 'natural.' The procedural aspect of institution, or the mode of action it represents and mediates, when become conscious and formulated, is law. It, i. e., the law, is the procedural aspect of the fact system, a more or less unconscious generalization from habituated modes of action considered as facts, 'evidence,' and, as such, i. e., as a positive phenomenon, has a practical origin.

It is not intended to say that such expressions as a 'bad character' and corrupted desire and perverted nature have no

meaning. The question is, *what* is their meaning? And the answer is that their meaning is to be found in the order of the content which they represent; and that content is the objective set of means through which purposes get expressed. Desires, properly speaking, do not get expressed. They tend to issue in action for us, but so far as the self-realizing tendency at work is the mere momentum of feeling, and in so far as ideas as elements of order do not arise within the experience, there is no tendency to issue in ends. As desire, it is the mere movement which becomes the infinite process. A bad character is then a subjective representative of an inadequate institution. For, purposes, in getting expression through objects, also get definition. That is, the purpose which takes expressed form in a system of objects (and by objects here I mean to include tangible, material objects) completes itself or ends itself in that system; its nature and function and quality are determined by these objects and its essence is nothing more than the order of these objects. As objectified (realized) the purpose is then just the order of the objects, the mutual definition of the objects by each other as they grow into integrity of form. My purpose is then *what* I purpose, the objective system of things which I propose (put forth) as at once the end of my present interest and the means to the further and later stages of my own growth. And this is what was said above in the statement that 'mind' is just the subjectively particularized form or stage of fact which is called content when it is necessary to refer to its meaning in relation to things. The mind then is objective in its meaningful stages, understanding by that that when it has thrown off its particularity by growth into overt form it identifies with the objects which were 'other' to itself when representing the stage of inner consciousness. But when objectified it loses its particularity of specific quality, and becomes indifferent to any and every qualitative determination, meaning by that not that it possesses no quality and becomes quantitative, but that it may have any and every quality indifferently, and that contradictoriness of quality in its nature does not destroy its being, but is responsible for the very harmony of opposites which constitutes it an integrity of fact. Real qualities may thus be contradictory as infinitely different. Then the objects which make up the content of mind are not the specialized instruments of specific purposes (the

relation is not a one-to-one correspondence of inner state to external thing) but the ordered systems of objects which as ended unities correspond to or constitute the make-up of mind or character as a whole. Then since objects in their meaning are indifferent to their specialized qualities or functions, they are the generalized objects of 'mind as such'; that is, they lose their particular reference to an individualized purpose as a specifiable person, and become indifferent to 'persons' as objects of the 'social' mind. And as a system of objects organized is self-perpetuating spontaneity they become the objective or "general" will. Objects organized as meanings then are the generalized instruments of *human* purpose, mind effectuated as common end or commonwealth in the institutions of life. And as institutions of life or objectified mind these systems of objects are the dynamic order through which life attains its successive stages of integrity—institution is the constitutional law of human life.

The mind then as constituted or organized around or objectified about the point of social stability in custom, the socialized mind, is a low stage, and is already superseded. It represents systems of objects not yet fully or dynamically ordered into meanings, consequently it can show no institutions in the proper sense of the word, no systems consciously 'set up.' Custom itself, then, has its origin in accident, is never a matter of law but always of mere fact. The order of mind as bound by custom, insofar as it could be said to imply a law, is not yet constitutional. Custom is fact specified, or descriptively classified, but not yet ordered. Its law therefore bears an external incidence upon its life, is properly expressed in terms of power and authority as sanctioned by pomp and ceremony, and can properly be called a law of causation. Objective mind, therefore, in this elementary and pre-political form constructs the life which, once constructed, is congealed into fixity. It builds a life out of independent and distinct unobjectified material which, like concrete, 'sets' into homogeneity and imitation immediately. It creates a life which is objective, in the sense of external, formal, quantitative, planless. The point to be remembered is, however, that as the outward life so the inward mind. And the objective content of fixity is determined by a mind without spontaneity. But it is recognized that if this account were strictly and literally

true, no progress of life could have been recorded in human history. It is therefore not true, except in an external and particularist view, so the mind of the sociologists is a groundless fiction. Mind is not objectified through its mechanical ends alone, is not completely expressed or outwardly ended by mere formal order, since formal order implies process and repetition endlessly.

But the socialized mind is in many respects nearer the truth than the individualized mind. It at least attempts to compass the objective, while the latter tries to reconstruct and reproduce the real in terms of sheer inwardness and subjectivity. The metaphysical 'subject of rights' and seat of innate dignity and worth is fiction still. As the point of incidence of a function the 'subject' has meaning, but as such its inwardness and privacy and uniqueness disappear, and it is properly an object. The attempt to form order about an exclusive point has resulted in that centrifugal and dispersive tendency in thought which has come to grief in the individualism of the past two centuries. Describe an atom in terms of inner dignity and worth, even clothe it with all the deferential qualities possible, it remains a lifeless atom still. And the wail of reactionary ignorance which calls for the restoration of now one and now the other atom, is one of the distressing effects of the confusion of ideas in the field of practical interests. The requirement that we 'socialize' the mind of the time, learn to think socially, develop the point of view of the (abstract) whole, develop class consciousness, or solidarity; that we go back to the eternal verities of the founders, re-establish bills of rights, restore individual rights, restore competition, 'back to normalcy,' all these are merely instances of a mind which is already socially conscious in that it can 'think' only in terms of the shibboleths that it has inherited, just as one inherits the color of one's eyes. It shows a mind hopelessly deadened by being determined externally by 'social' forces, and the one hope of intelligence is that the vicious circle of cause and effect between mind and social influences be broken. We are thus reminded of our 'personal' responsibility, and advised to think problems through within the recesses of our private 'thought.' We suggest that the way out is rather through the mind's taking up for critical review, its own constitution as found in institutions to the end of the

better adaptation of those institutions to the requirements of life.

VIII. THE INSTITUTIONALIZED MIND

But what in detail is the institutionalized mind? I have described mind as the order of institutions, and institutions as the systems of objects, ordered with 'respect to the ideas' in nature. And by those objects I mean simply the whole sum of 'tools,' from the crudest of material things to the highest of refined purposes, everything in fact which for itself has its end not in itself as now constituted, but in itself conceived as integrated wholeness. It is in this that institutions as orders of objects are sacred: they are, as they are, the only means to the fulfillment of the end which they now only imperfectly represent. But their very indispensability is also the ground of the obligation to continuous critical reformation of institutions to maintain their responsiveness to the growth of purposes. And this means that everything that is real is a means; we violate even the Kantian injunction when we say that not even persons have their ends in their present selves, and are to be used theoretically as well as practically as means. But things are to be used as appropriate means, means antecedently calculated to their *propria*, and it is violation of this principle which is error in practical connections. 'Persons' are the appropriate means to larger and more comprehensive forms of individuality in institutions and the state. But as to what in detail is the institutionalized content of mind, it may best be described by taking once more the practical interests, and examining the nature of objects involved and the kinds of minds which these objects *institute*. We take therefore such institutions as the industrial, the economic, the political, social, religious, etc., and attempt to understand the interaction of mind and object as means and end in them.

We may begin with what, in an organic and material sense, at least, is the most immediate of these interests—the industrial. Industry as an illustration of the relation of mind to objective order is especially convenient and striking because of the negative results, that is, the confusion and chaos in industry. By industry is meant all the sum of those activities that are devoted to the sustenance and maintenance and procreation

of physical life. The account may therefore very well take the form of speculation about the origin of elementary experiences. And since in the case of industry relations of mind and object are negative, these experiences may be regarded as pathological. And for the sake of the method we may begin with the hypothetical simplest and most primitive conditions of industry. We may suppose a 'man' in the 'state of nature' before marriage gave any permanence to the sexual institutions, whose roamings are determined solely by the demands of hunger and sex. He eats what he can find, and his activities insofar as they are directed at all, are controlled by his senses directly in pure reflexes. This theoretical abstraction is merely an attempt to isolate a 'specific situation.' Its abstractness, of course, proves the situation unreal. The pure sensations as even the lowest aspects of 'mind' are already to some very slight degree institutionalized, already adapted to certain types of objects, those which smell, show color, etc., and as the type of food object changes the type of sense feeling will change to adapt itself to the changed nature of the object. But the change of inner 'taste' we may assume lags behind the immediate change in environment, and thus represents at the same time a contrast between a *present* and a *presented* quality. This difference in quality, which may as yet be a mere difference in intensity of stimulus, may affect a change in muscular response, which as the possibility of directed action, may be regarded as an incipient purpose. It may therefore lead to the attempt at control of objects, and become the element of order in fact which when taken abstractedly is 'inner,' but which rightly conceived is a situation of fact '*minded*' by an order which is natural or appropriate to it as fact, a set of fact which is the promise and potency of a 'made-up' mind. The point is that the ordered fact which we call mind *will take its practical character from the dominant quality of the sum of detail of fact*, and we have a mind individuated about the fact of hunger in which stomach and apple and thorn and effort of climbing, or of throwing a club, give dominance of quality. The mind *is* then the factual order in which stomach and apple and thorn and climbing effort relate to each other; it is not a question of *how* they 'become' associated. The type of mind then is the synthetic quality of detailed fact, the mere fact that facts fit into each other, and its reality

as a sense experience is ended (here on this low plane the term is used in a literal sense) in the satiety, say, which puts the organism to sleep. That is, it is ended in what gives it finality of form. Pluralizing the situation we have now the physiological and psychological bases of economics. But there is little good in speculating about primitives, for one result in a discussion of simples is as true as another where everything is abstractly false. Economics as grounded in physical needs or psychological wants or desires does not therefore as yet begin to be a human science. Let us take therefore a man living within conditions which we can verify as fact at any instant.

Take for example the man with a hoe. And assume that circumstances have determined that the hoe is the tool through which he gets such degrees of self-expression as are possible to him. I should by no means argue that the degree of expression which he may thus get is necessarily low. But it means that his purposes must represent and be circumscribed by such changes in the soil and in plants as can be effected by means of the hoe. Then the type of idea-images present to the prevailing order of his mind are those of soil conditions and the varying growth-forms of plants. These ideas may extend to the construction of a science of agriculture or to an art of painting of life forms. But in any case the order of ideas is specialized to the type of objects involved, and there seem only two ways in which the circle of idea-objects may be extended so as to include object forms of different institutional value. In the one of these, the idea of producing towards ends of utility may determine a circle of ideas about the law of necessity in such concepts as the minimum necessity to life and health, and, as we shall see later, in the more complex types of vocation, what havoc this situation may play in the order of idea-values which gets called character. We shall see, e. g., that the necessity of subsistence as it operates in 'wages' creates or carries with it as subjective complement what may be called a 'subsistence mind,' and how this type of mind arrests the normal processes of development short of any adequate ending in satisfying values. The absorption in making a living renders a life of significance impossible after the material conditions of life are obtained, determines a life-form which is 'ended' in the mere process of maintaining a *status quo* of organic processes, in the mere effort to keep

alive. It is therefore an inhibition of life in a form previous to the stage of progressive attainment which characterizes the human, and a reduction to the causally stabilized life of animal or even of vegetative limitations.

But the free-play property of ideas may, in the second case, create a symbolized form of expression in the activities with which the hoe-man fills his leisure. Thus the 'workman' may, after the hoe-monotony of his vocation is over for the day, entertain himself with a hobby—may cultivate a garden or raise flowers or study astronomy. Or, he may find an end within the rhythmic process of the hoe-life itself. He may thus effect a more or less satisfactory substitution, through imagination, of real ends for the merely technical ends which employ the major part of his time. He becomes a poet or a scientist. Or, if he happens to be of the peculiarly submissive type of mind, may look upon the dichotomized life of hoeing and playing as a form of completion of his real ends. In any case it is the outward life-processes which determine the make-up of his mind, and not he that controls conditions. But it may also be that the satisfactoriness of his life is of the illusory form which is induced by suggestion, and if so the man may break out of his hedged-in existence in some form of action which is puerile or even criminal. This action is also dictated and produced by the constellation of external fact. Thus he may contract the 'movie habit' or the habit of scandalizing his neighbors or blowing safes for reasons that are entirely unknown to him, and his criminal or foolish actions may be more surprising to him than to one who sees his life situation from the outside. One of the sad spectacles of human life is the case of a man who regularly does acts which he cannot connect with his own idea of his character, or the worse case of a man deliberately looking about for reasons by which he may deceive his own mind.

But such facts show that the man is 'minded' by the object-systems of life which environ him and which he individually does not create and often does not even understand; and, since his capacity is twisted by the conditions under which he lives, could not understand if explanations were given. When he understands, in whatever degree, the object-systems become institutions. That is, as merely adapted to an object-system, he is past the point where he can any longer learn, has become

mechanized to his habitual processes. So 'night schools for the workers' is itself a commentary on the understanding which the experts in social reform have of the conditions which determine life forms. But taking the same ordinary man as bound up within the more complicated conditions of modern industry, the situation becomes more difficult of analysis. Here the processes through which the worker must go monotonously, the specialized activities due to excessive division of labor, are such as to lead to no satisfying ends at all. There is for the man who does the work, no end or purpose to the highly specialized piece-work of large scale production, i. e., end and means are so widely separated that the worker who controls the means must do so without reference to the ends, which he cannot see and of the existence of which often does not know. It becomes, then, literally mere blind process. And what ends may appear to come as results from the work are such as either accrue as values to somebody who has no immediate relation to, or interest in, the work as work, or are such as connect in no natural way with the processes which produce them. Thus there is an absolute divorce between means and end, either in the sense that the man who is concerned with the means never sees the end accruing to him as a value, or in the sense that *the* end which results for him is not the one which in the nature of things should result as the appropriate fulfillment of his activities. We are in the habit of saying that industrial confusion comes from the confused thinking of those engaged in it. But the confusion of thought comes from mal-appropriateness of objects and processes which are the make-up of the minds involved.

The end of activity or work should appear as the perfected form of the activities themselves in an object of value, and the access (we would say free if not sole access) to the object of value should belong to the man who does the work and thus controls the processes of its production. Any other arrangement breaks the normal evolution of effort through activity into object-value—the evolution of the inner through growth into objective permanence which carries the qualities that satisfy. If the effort of a factory operative ends with the control of a machine which cuts the uppers of a shoe, there is an activity which is and always remains partial and infinite because the object into which it issues is a detached part; it can never be

the object of an esthetic attitude or the goal of a purpose, hence leaves its originating 'mind' without stable connection in any direction. As a means the effort never ends, never makes the natural connection with the object which would appropriate it, and it is left dangling in mid-air as a charge of unfinished work in the eyes of the person who puts forth the effort and who feels that his motives to effort are all as yet unexpressed. It hangs there as an eternal accusation to his conscience, a taunt that his life is incomplete. Or, if the worker is instructed in the wholeness of the operations of the plant, he is overawed with the consciousness of his insignificance as a part in a complicated whole, and he never succeeds in ordering himself within the wholeness or identifying himself with the total purpose, for the real wholeness is a matter of personal contacts and these are made impossible by the machinery. And, if he is shown the perfected object or product, it stands to him as a symbol of the values which in the normal operation of means and end would fulfill his purposes and end his efforts in a value formed with reference to ownership and use, but instead is appropriated by persons to whose efforts the product, so far as he can see, bears no natural relation.

Thus is determined the *endless* life activity and the mind never made-up to satisfactoriness which results from the absolute splitting up of the normal orders of related means and ends in industry. This is the *division of labor*! It may be observed that the 'operator' who gets the economic benefit of the product of work is, in spite of what he may think about it, no more nearly satisfied through a realized sense of the proportionateness of industrial life than is the 'worker.' While the 'worker' makes up a mind embittered with the sense of incompleteness and futility, the 'operator' becomes a mind made up in terms of satisfactions which have no relation to his own effort or desert, hence he resorts to sensuous excess and golf. And the evidence in both cases is the same, the attempts which operator and operative alike make to supplement the lack felt in this regular routine by artificially created satisfactions outside industrial life. And the attempts in the one case are as pitiable as in the other. The drunkenness and brutality which often are displayed in the life of the worker, and the giddy round of chasing of cheap pleasures, are matched point for point but in exaggerated degree in the refined debauchery

of fashionable resorts and in the spectacular license of business men on a vacation. This description holds equally whether you apply it to the system of external facts or to the inner facts of mind. It thus shows that mind is the order of a state of fact, and the state of fact is an order of detail identical with that which is the content of institutions. It is then nonsense to speak of an original metaphysical mind which creates institutions, or of institutions as producing minds. The relation is not a causal reference between distinct realities, but a distinction within the complex aspects of logical ground. Mind is the natural order of fact; institution is minded order.

The practical maxim implied here is that any efforts looking toward reform must adopt the principle that changes made in the real must come as a result of effects produced in the *order of objective fact*, and not through metaphysical inner regeneration of minds. The make-up of mind *follows* (logically) the ordering of objective fact. This principle is instanced in the fact that educational accomplishment follows a certain ordered use of material.

IX. TYPES OF INSTITUTIONALIZED MIND

But these facts are well known. The necessary deductions from the facts, which are themselves observable facts, are the mind-types which are instituted or precipitated by life processes such as those which make up the routine of industry. It is not the purpose here to condemn 'the system' or to indicate reformative means of obviating the evils that are organic and necessary in such a system. We are seeking a clue to the factual organization of mind which characterizes the life that has superseded 'socialism' and 'individualism.' It begins to appear clearly that it is the institutionalized mind, mind organized about and within object-systems. And the complexity of institutions which has brought confusion into the order of human activity has effected a like confusion in the thought order. That the confusion has affected fundamental principles, can, I think, be demonstrated equally by simple illustration. In the case of simplified activities like the ones described, we saw the effect in the monotonized life of a mind centered about a specialized and partial process. It is a mind repressed into the narrow sphere of idea-ends dictated from without, unfree

to express expansively its life in ends natural and appropriate to its peculiar motives. It is a case where the end-system is too narrowly circumscribed. The consequence is the explosion of idea-forces which break out beyond the confines set by ideally appropriate ends themselves, and the results are immoral and degrading, not only for the routinized and monotonized worker, but equally for the overfree and privileged and therefore licensed recipient of inappropriate end values. The expropriation of ends from means is the bane of industrial society, and the break-up and confusion of mind show the organic dependence of mind upon institutional forms.

But when we complicate the situation by remembering that the man who spends his life in industry seeks to save it in a myriad of other institutions which become constitutional factors in his make-up, the problem becomes much more difficult. It is the defect of the industrialized mind that it seeks culture in too few object-types. The same man who is a worker in a shoe factory is a democrat and a Methodist, a member of a mutual insurance association and a trade union, and has invested his savings in a building and loan association. He has a daughter in high school and a son who had to leave high school in the last year to help pay a surgeon's bill occasioned by an injury to the mother by the street car. He has three friends with whom he gets a week's fishing each year, and an errant stepson for whom he is guardian. A strike in the factory makes him dependent upon the reserve fund of the union for the payment of his union dues, and thus develops the co-operative bond between him and his fellow-workers. But the effect of this is that it centers his main interests in the union rather than in the factory, and alienates any tendency to friendly relations to the management, which seems to him responsible for the misfortune. The strike also endangers the payment on the building and loan stock, which necessitates that his daughter work evenings. But this causes her to fail in her school work, and as a consequence she leaves school and accepts employment in a store, the moral effects of which the father knows only too well. He must miss his fishing vacation this year, and the importunities of his friends make him despondent. Fortunately, the inheritance of a small sum comes now to enable the daughter to re-enter school. But she has already tasted the 'freedom' of earning and spending her

own money, so the school has lost its appeal. Of the occasion of a slight impropriety in her conduct on the street due to solicitations from an idle-rich debauchee, a corrupt police force can make political capital, because the father is a ward committeeman for his party. The daughter is taken to court and here begins her career as a 'fallen' woman. The father's despondency saddens into a permanent resentment, and he robs the factory of the pay roll. Similarly, the owner's career goes on either through success to conceited independence and flouting of moral obligation and debauchery in stupid pleasures to the assumption of brutal power due to wealth, or to an equally irrational outburst of good-will and brotherhood; or through failure to recklessness and insanity or suicide; and in either case the result is just as 'accidental' as in the other. The interesting thing, however, is the ambiguity of character and contradictoriness of motive shown in the mind thus constituted, whatever station the person in question may occupy. And the ambiguity and contradictoriness are the exact parallels of the disorder of the objective forms in the industry. The man who is over-scrupulous about paying his grocer may appropriate the funds of his party, and the man of fundamentally fine instincts in social relations may be brutal in business and insincere and pretentious in religion. And persons of peculiarly delicate and sincere feelings in religious relations become as bloodthirsty as brutes in an industrial dispute, and openly advocate force and violence within the same breath with which they commit themselves to law and order and the use of reason and prayer-meeting mythology in the settlement of disagreements. The curious fact is that from his own point of view he is honest in all these contradictory attitudes, and to question his honesty in the advocacy of reason as a solvent of all disputes will stimulate him to a brutal outburst of force and a later appeal to reason to justify the force. This contradictoriness is, *as mind*, nothing more or less than the inward and subjective aspect of industry and its essential disorders.

The human mind is then the unity of order in the institutions of life. And the degree and worth of that inner order of mind will depend upon the type and quality of order that can be set up in the complex of those institutions. The industrialized mind shows few of the characteristics of the higher stages of morality because it is conditioned by and upon a state

of chaos in institutional relations. Moral ends can therefore be secured through industry only through the reorganization of industrial institutions upon principles dictated by the whole as order. The attempt to make such relations meet the requirements of morality and right by placing them in the hands of "good men" is putting the cart before the horse and as futile as the attempt to overcome corruption in politics by the election of "good men" to office. Goodness is not individual in the sense of private to the isolated human being. Goodness is objective and universal, i. e., institutional. We may here make a further appeal to psychology to what is perhaps a generally recognized principle. It is perhaps a truism that every state of mind is known only through its external expressions (even introspections must be communicated to become knowledge that is valid), and the practical or educational principle that in order to affect mind it must be approached through its external forms by the control of objects. These define mind from every point of view, in terms of the externally existent and 'independent' objects which make up the environment. The environment is then objective or outside content for mind, which, as mind, is the order of the content. Mind is manifest only in its objects; and to make changes in the inner constitution of mind requires a concentration of effort upon its content, the institutions. Determine the objects into which ideas are to enter as ends, and you determine the essential meaning of the ideas; *set up the system of institutions proper to the ends which will objectify life, and the minds with their 'natural' and 'inherent' rights, etc., will take care of themselves.* And so will all the properties of mind which are to be regarded as real; morality is attained in the object which completes or ends or rounds out the life of which morality is the law; truth is reached in the public system of consistent end-means which is the constitutional law of thought; and beauty comes as the embodied soul of the system of feeling values made overt in objects which give finality to the orders of truth and morality. The essence of mind is that object natural to its appropriate end—the object of experience.

From such considerations the question of control in social and political relations gets the principle of its solution. The occurrence of lawlessness and the failure of social policy to get proper expression is not due either to the 'bad' men there

are in society or to the 'corrupt leaders' who get the brunt of blame. The bad men and the corrupt leaders are themselves merely the impersonated form of an institution maladapted to its end, and when the proper adaptation is made the type of man will tend to disappear. The hopelessness of reformative punishment also appears here, for it is to no purpose to allow a character to become institutionalized in negative and destructive forms and then hope to make it over in a specialized institution. The theory of responsibility finds also the conditions for its right direction in such reflections. 'Personal' responsibility in many human situations never can be located. Correct the objective evils in the institutions of life and the subjectively undesirable characters will disappear of themselves—all of them perhaps except in cases of the inferior in 'mental' capacity, the so-called defectives. Even many 'defectives' are made more or less rational by proper incorporation within an object system such as is involved in learning a trade. Restore to expenditure of effort the natural relation to its appropriate object as the end of that effort, and the phenomenon of crime will tend to disappear. For the idea of crime is just the purpose to expropriate the normal object from its corresponding productive effort, and it comes from the objective instance or example of maladapted institutions, the case of institutions which divert the object-value from its producer. It is the condemnation of the prevailing industrial institutions to say that their first and conscious purpose is just this expropriation, while the fact that they at the same time serve larger social ends is regarded by them as merely incidental.

The problem for all human practical interests is then one of finding the type of mind which corresponds to a given type of institution or system of institutions, or, of finding the type of institutions which will objectify and maintain the type of mind or person or individuality desired. The question of human order must therefore ignore and go beyond the 'social' and 'individual' conceptions of theory in practical relations. Both are false, and it is necessary to find a basis of the continuity of life in the nature of life itself. This nature is primarily disclosed as a tendency to order. Consequently the thought category indicated is that of organization, and the object-form of organization as natural is institution. And the question of the value of an institution is a question of the type of mind

which it tends to sustain—as, e. g., the subsistence mind and the luxury mind which come as direct products of the industrially dominated organization of the present. The measure of character is then the descriptive estimate of the kind of means through which it attains its ends, just as the estimate of the value of ends is the character of purposes which those ends embody. The final criterion is then the degree of ordered symmetry of fact and purpose which makes up the system of impersonated ends as the institution or *set-up* of life. This is objective mind. This is not intended as an ‘economic’ interpretation; for while it is true that the content of every end collects about a materialized object which may in a perverted system of values be prostituted to mere sale and barter, it is also true that in the system of values where means are rightly appropriated to ends the same materialized objects are the outer forms of human uses and the sublimations of beauty. They are thus the stuff of education and art and culture generally, just as they are also the ‘goods’ of barter and sale in commerce. But so long as their major use is primarily as the merely procedural or distributive instrument of exchange rather than as goods exchanged, they are perverted to the low purpose of expropriation or separation of means and ends, which is business. The harmony of goods is the ultimate good as typified in art. Nor is this a merely psychological interpretation; the goods of life are not merely the states of mind or feelings in terms of which life is usually interpreted. There is no subjective state or state of mind which is in itself real; this is the fallacy of individualism, the idea that somehow every real thing is ultimately a simple and indecomposable soul of inner feeling or consciousness. This latter, we have seen, does not exist; the individualized person is a fiction. It is therefore not surprising that the religion of individualism degenerated into the various forms of inwardness and aloofness, the tendency of which is dispersive and destructive, such as is represented in the denominationalism of the present, each of which seems to have originated from the supposed discovery of a peculiar feeling. The legal and political philosophy which refers ultimately to a private and isolable and homogeneous and inner experience is also easily explained and as finally condemned. And in philosophy the interest is necessarily in the subjective problem of epistemology, or how

to *make* thought objective, after assuming that it is not. Nor is it strange that the age of individualism is coming to a sorry end in a paroxysm of 'psychology.'

Our result is then finally that the principle of individuality is not discoverable in the unique particularity of specific quality which serves to characterize objects only in their distinctness from other objects. The fundamental ground of this result is that on the assumption of individuality thus principled *no conceptions of order are possible which show any appreciation of fact.* The best and worst that individualism can do is in the one case to attempt an order of realities on the assumption of absolute likeness among reals, and this issues in the dark regions of identity where order has disappeared. In the other case the result is strangely similar, the emphasis on distinctness leads to the notion of reality as the infinity of severable qualitatively negative units. These units are not integrable, consequently no commonalty or mutuality is conceivable as the basis of an order. And as there is among reals so conceived no indifference of reference to ends, such reals have no meanings; which is also true of the abstract wholeness which comes from the quantitative agglomeration of abstract reals and is characterized as identity. Both the idealistic or rationalistic and the empirical philosophy are guilty of the same fallacy, and the history of philosophy has seemed to live through the past century largely because each stated the fallacy in such a way as to appear different from the other, and thus left a common basis in error for perpetual discussion. This criticism is of course not so true of philosophy proper as of the alleged practical philosophy which has become the basis of politics, law, etc. But philosophy is responsible after all for the perversion of ideas in these practical relations, for it has assumed that it could deal with abstract method alone and leave the content of thought on one side, with the consequence that the content of philosophic thought is taken over *without form* by politics, economics, law, etc., leaving philosophy the abstractness of mere epistemological method. Philosophy has thus forgotten that its content is politics and industry and law and morality; and these not as theory-forms but as objective materialized fact; in the absence of which content philosophizing becomes sounding brass.

But what, then, in terms of the content of life as represented

in politics, economics, law, morality, etc., is the meaning and the principle of individuality? The question of individuality is the question as to the *mode* of reality, how the active real is realized as the perfect tense of the verb of life. Our assumption is throughout that the mode is immediate and discoverable in the process of fact. Not that the process is the real—a mere identity is meaningless in any case—but that it is the face of the real in whose countenance the real is ensouled. The real, then, while not the immediate, is immediate in every fact. The individual is an object whose constitution is its history and whose end is the institutionalizing of that history into forms which through their universality the individuality shares its life with other individualities. In its structural aspects it is therefore the manyness of fact in process and time and space which lays the foundation for the continuity of life, and the ground for reproduction, the passing of individuality into individuality. The question of the real continuity of individuality through reproduction is further discussed in Ch. V on the Organism as Corporate Individuality.

But as distinguished internally by reference to these structural aspects, and as formed in effectiveness through reproduction, continuity is established with its functional aspects in the conversion of the objective structural characters into meanings. From the point of basic structure then individuality is a continuity of degrees, degree being the mediator between the internal and the external characters of the real and representing the relations of aspects of meaning. These relations of meaning are characterized by the indifference with which they refer to temporalized elements of structure,¹ so that the individuality is the principle of mutuality through which the real will individuate with any ordered form or degree.

¹ This leads to the commonsense interpretation of meaning in purely subjective terms. It is also responsible for the common notion that value is subjective in the sense that it refers to no peculiar properties in objects, but has its significance from its imputation to objects by a mind. This is of course true in the sense that it is only within systems of purpose relations that meanings appear, but it also true that purpose relations will not hold status unless incorporated with externality in material things. What is meant here and throughout by indifference of reference is that a meaning refers indifferently to objects regardless of their particular materialized form or quality, but not indifferently to their materiality. A meaning must have a stage of overtness in order to be communicable and objective, and it is this overtness or reference to matter which enables meanings to reproduce themselves. They are thus individuated as formed or materialized at a stage beyond their 'now.'

This gives the manyness of realized or independent forms of individuality, also at the same time their effective unity, which makes up the unity of a society. But as a unity the society is merely a more completely individuated form, the conception of individuality being that of cumulative and expansive order or growth-order. It is thus pluralized by repetition, but the repetition is one of the materialized forms through which the meanings are incorporated in quantifiable objects. Individuality is therefore an incorporate system of functions, each of which is identifiable in meaning with the whole, so that the whole is a value as an end. It is an end in that it is the completion of what its constitutional elements mean, the elements are ended in it, and also in the sense that as incorporated it maintains its integrity in the process of the constitution of a higher 'symbiotic' individuality. As end in the latter sense the individuality is also means. It is means in the structural sense that it is instrumental to its higher forms in the growth process, in which sense individualities may be described as serially related in time, although such description could never be adequate to the whole of individuality. This makes the life history of an individual a factual continuity, and, as incorporate, gives the element of fixity and permanence and rigidity to institutions. But individuality is also a means in the functional sense that it represents other and higher forms as values, and a value is in this sense the interpretation of an individual in terms of its reproductive reference to other individualities, through which relations individualities unite in the constitution of other individualities, as persons unite in the community through marriage as the institution of reproduction, or as the institution of private property is the reproductive means to the multiplication of industrial corporations. The continuity of the real is therefore effected through reproductive relations in the Platonic sense, whereas all the efforts of social theory attempt to establish continuity of the real on a basis of mere repetitive relations. It is the incorporate form of these interpretative references that makes up what we know as art, and as the 'constitution of things' this incorporate form is nature.

As a definition of individuality this statement is involved and abstract. It is so, we may hope, because the subject is difficult and important, and for the further reason that we are

engaged in a search for the principle involved. And so far, we have been concerned only with the ultimate theoretic form which the principle assumes; and this has occasioned difficulty in the fact that this theoretic form has been sought in practical realities of fact. But any definition is an abstraction from the essence of the thing described. The essence of the statement is the idea of incorporate meaning as active and creative will and it is with this idea that subsequent chapters deal. This statement may therefore be taken as an outline the content of which we hope to make clear in the chapters which follow. The essence of individuality is *corporeity*, for this is the ground of the possibility of order, and the purpose of science and knowledge is to examine and explain the forms of corporation, and the laws by which these forms are incorporated.

But if we may assume that individuality has been in this way and in these terms adequately defined, then our definition becomes the principle of constitutional law for the higher forms of social-individuality, or those forms of individuality in which natural persons are the instruments of purposes of the whole. The principle then which states the essential nature of the natural individual is identical with the principle of social organization, and in this identification the 'individual-social' question finds its solution. The following chapters will attempt to clarify and justify our principle of individuality in some of its more obscure and difficult implications.

CHAPTER V

THE ORGANISM AS CORPORATE INDIVIDUALITY

In preceding chapters we have been concerned with the principle of individuality as a ground of real order. In the three chapters next following we shall be concerned with the ultimate objective forms in which the principle embodies itself, with further reflections as to the nature of order. In the last two chapters illustrations of the two ultimate aspects of individuality will attempt to show how the principle of individuation may become the principle of control in the major objective or public concerns of human life.

I. THE ORGANISM AS LIMITED INDIVIDUALITY

If we may adapt the terms of our definition slightly, so as to emphasize the fact that every individuality is inwardly and subjectively a plurality, we may say that the organism is a corporate individuation of biological functions. It is this organism with its biological functions that is the tacitly assumed principle of reality for the natural-rights theory of social-political relations. It is the basis of the concept of the individual in "individualism" and as such its claims to the dignity of principle require to be examined in the interest of principle. We look therefore to the biologist for light on the nature of these functions and their significance for principle of ground for law. "Living bodies are not simple geometric forms. . . . Living bodies are typically combined forms; that is to say they consist of different parts of different characters, which have a special arrangement with regard to one another; these parts have a typical form of their own and may again be combinations of more simple different parts. But besides that; living bodies have not always the same typically combined form during the whole of their life: they become more

complicated as they grow older, they all begin from one starting point, which has little form at all, viz. the egg. So the living form may be called a 'genetic form,' or a form considered as a process."¹ Thus specifying process as a function of the total organism, and as such the bond of continuity between organism and species: "Living forms not only originate from the egg and are able to restore themselves, they may also give origin to other forms, guaranteeing in this way the continuity of life" (p. 20). That is, living forms possess the capacities of origination, restitution, and reproduction. This statement involves little more than differences in wording from our definition of individuality. It differentiates living forms from what Driesch calls simple geometrical forms by the mode of combination of parts and internal structure, the combination of parts in living forms being due to the laws which express the relations of the parts taken as constituting an 'independent' or self-supporting, self-restoring, and self-reproducing whole. The geometrical form may therefore be said to be instrumental to a purpose outside itself, or to use our previous phrase, one which is ended not *in* but *with* something other than a form of itself. It is therefore not principled at all, but its form is mediated through casual law. It therefore never ends, and the proper description of it as ordered fact will involve the laws of mechanism and causation with the limiting conceptual characters of space and time. The limited degree of ordered independence which it has therefore is due to the fact that it is individuated subjectively, that its constitutional law is limited in its comprehension to space and time forms. And a limitation of the applicability of the principle of individuation is what distinguishes the subjective, is what is responsible for the inconclusiveness and isolation of what is individuated internally. This establishes what we said about the subjectivism of the organism. The space-time form is therefore concentric to itself or self-centered, and as such cannot grow; for it lacks the cumulative power of an order individuated outside itself or eccentrically by the principle of purpose, which is always objective. And the essence of meaning of objective is "outside." The space-time form therefore does not originate in any sense of the term that can be made

¹ Driesch, *The Science and Philosophy of the Organism*, London, 1908, pp. 19-20

intelligible, for the origination of a thing implies its *coming into* space-time form, while the geometric form is "by nature" *in* space and time. Its growth can therefore only be thought of as a mere process, since the relation of one form to another in process is discontinuous and the movement of the physical is therefore repetitive and *inconclusive*: and, since the reference relations of its facts are not indifferent but specified to single units, its relations have no essential, but only a symbolical meaning. The geometric form is therefore characterized by subjectivity in every point in respect of the question of origin.

The living form, on the other hand, possesses the power by virtue of its own order or organization to come through growth into being in space and time. This reproductive capacity of organization is what is meant by spontaneity. The living form possesses spontaneity in the sense that it continuously sustains itself and maintains itself in an organization that is characteristic. Organization with a further constitutive qualification is, as we shall see, what is properly called will. And this power of sustenance and maintenance comes not from its internal or subjective constitution or 'specificity,' but from the fact that it is ordered eccentrically in the sense that its content as universal is external to and beyond its specialized form. The determining content of the living form is the variety which it may take through growth in the processes of sustaining or restoring itself and of reproducing itself. Its content is therefore outward to itself in the indifference of reference of its meaning to the forms permitted to it by the possibilities of transmutation. It is this indifference of reference, and the forms which it takes which 'specializes,' i. e., marks off into 'species,' the lower or relatively unorganized forms into the complicated forms or classes recognized in biological science. There is, generally speaking, no classification of inanimate or geometrical forms; this is what makes the mathematical theory of classes a pure abstraction, and so of only formal logical consequence. But this specification through indifference of reference is one of the 'large' generalizations of evolution and should be classified among the questions which are as yet *sub judice*. But any of the higher forms ends itself indifferently within the narrow limitations of sex and other specific characters, that is, its content is externalized

by the indifference of reference to sex distinctions, and, in the case of the so-called Protean forms, this indifference covers a rather wide field of variety. In sustaining itself and reproducing itself, then, the living form becomes an individuality in that it realizes its end within itself while the end is formed from a content without itself. Its content and meaning are the forms possible to it, the forms which it may become by transmutation. The three processes of origination, restitution and reproduction are the same process, the expression of what is inherent as growth stages in the order of the living form.

But it is only in relation with living forms that real continuity has any meaning; and, as a concept derived from continuity, and taken as connoting variety, that unity has any meaning.¹ And, since continuity rests upon the objective reference of fact and the extraneousness or commonalty of content which constitutes individuality, only individuals can be said to be continuous. Then it is only by a metaphor that we may speak of causal relations as representing continuities, or of continuity in time and space.² The attempt to think continuity in time and space gives merely the abstract identity of homogeneity or the abstract formlessness of a concept which represents no variety of content. And as content is external, and as the external becomes the intent of a purpose, purposiveness³ will have to be denied of whatever by virtue of its qualities belongs only in the class of temporally and spatially determined things. Continuity as applied to these latter becomes the endlessness of repetition and pluralization of entities to infinity which makes mathematics fully true of them but true of no living relation. Unity becomes the unit, and inwardness in terms of uniqueness and privacy and inherence becomes the implicate of abstract form. But continuity of living forms implies the commonness of their content in the

¹ Unity in the geometrical sense gives us the "pure" form of art, which as not yet individuated, is not real. It is this transcendence of geometrical limitations through unique quality which justifies a real work of art being described as "living."

² Cf. Driesch's interpretation of cause as ground or system of functions. *Science and Philosophy of the Organism*, pp. 101-2.

³ This of course implies the definition of purposiveness in terms of meaning references. As implying the possibility of meaning reference, the possibility being realizable under statable conditions, space, time and cause relations may be conceived as conditions of purpose, but it must be remembered that space, time and cause, as thus used, are not scientific conceptions in the strict sense, but begin to be logical categories with metaphysical implications.

system of objects which makes up the environment. And as this content is internal only in the sense of being intentional in the end which the individual as a present form anticipates, the life of individuals is the community of nature. That there still remains an area which is non-common and private and special is of course admitted, and it is further admitted that this private element has its place in the constitutional law of the individual. But its place is material and merely the stuff of individuality until it has become generalized by reference to its position within a larger whole and at this point it loses its privacy. That is, when it takes on a meaning, which means that it adopts an indifference of reference to its own content, it loses its uniqueness; and the individuality which is principled by reference to its own specialized characters becomes the abstract competitive unit of individualism which we saw to be the empty atom. Continuity then means commonalty of content, or the objectivity of content as individuated about a point external to its form.

Continuity, then, as the abstract ground of individuality, is the principle of unity among individuals. We shall see how it is also the bond of unity between the individual and the species.

But continuity, as mutual inclusiveness of content, implies the cumulative or growth character of individuality as a system of degree forms concentric to a single principle. Then the same content may not only be common to any number of individuals, but a low degree of individuality may itself be content for higher forms. One individuality may therefore use another; and the famous Kantian dictum has meaning only on the assumption of the type of individuality which we have rejected as answering to none of the facts. If it were true that all individualities were 'equal' in 'dignity' by virtue of their inherent qualities or 'rights' it would then be true that one could not be used by another for the simple reason that one could take no relation at all to another except the abstract relations of space, time and serial or ordinal number. But on the assumption of the cumulative growth character of the real, with the assumptions of the objectivity of content and concentricity of orders about a single principle, one individual may become content for another, and the law of one superseded in the fuller law of the other. Moral obligation then

becomes the question of *how* one individuality is used by another, that is, a question as to the relation between individualities as such. But this of course implies that individuality is not restricted in meaning to the organic forms, or those forms which as St. Thomas said are individuated by their contact with physical nature, as we have seen to be true of the individualities of the political, ethical, and legal theory of individualism. Then what these theories really had in mind was the unit of physical determination in space and time, and their reference to rights and dignities merely implied abstract subjective and ultimately physical relations. Right then finds its full meaning in the conception of possession, and the relations which right characterizes become emasculated or denatured in contract as the meeting of abstract wills. And in the same way the spirituality of the soul of religion became so confused with organic characters of feeling that temporal and material goods took the place in religious thought of a good represented in the *order* of the Kingdom, which itself finally comes to be regarded as a covenant sanctioned by property. There can be therefore no complete idea of individuality derived from the nature of the organism so long as the organism is regarded in strictly scientific terms. The organism is an individual, but its limitations make it a low form; its structure makes it impermanent in the accidental and precarious character of its process of reproduction, and its order as conceived under scientific categories makes it only imperfectly instrumental to a higher form. And what is merely instrumental to a higher form is not yet the fullness of itself, not what bears its end in itself objectified as content outside itself. There is a limit to the cumulative growth of the organic form, and this subordinates it to the forms of individuality represented by the state, the church, etc. The last item of our definition of individuality is therefore the limitlessness of its possibilities of ordered growth which by cumulation joins a given form to its universal in the type. This is the point which was so hard for Plato and Aristotle; to see that in an individuality like the State there is a limit neither to the physical size of the State nor to the complexity of order in its constitution. The Greeks had not the data for a full understanding of the nature of growth, and for the modifications of the conception of individuality which it entails.

II. DISSOLUTION OF THE ORGANISM AS A LIMIT TO ITS INDIVIDUALITY

Organic individuality is therefore not limited merely by its impermanence and by its subserviency to higher forms. It is true that the full type must be permanent, but permanence is not determined by the mere indissolubility of the order of content which characterizes it.¹ The mere fact that the organism ceases to exist is not a fact which tends to disturb its claim to individuality. In fact the dissolution of the specialized organism is necessary to the idea of its individuality, in that its order as individuality is the order of a real process. And this processed order is what is meant by growth. Dissolution then means absorption in a more inclusive form through the process of growth. Nor is the limitation of form to which the individual organism may attain by growth an argument against its individuality, although both impermanence and limitedness of form are necessary effects of the operation of the law of the whole which is the criterion of individuality. The human organism is probably limited to a given definiteness of bulk and outline, and it may be that these are limits established by the mere tensile strength of tissues or of nervous force or by the degree of expansiveness of which its characteristic type of order is capable. It may be that the human body cannot grow beyond a certain size and weight because of a tendency of its materials to pervert their own functions when overgrown, or for organs to interfere with the natural division of labor in the whole when developed beyond a fixed maximum. It may also be that the human body cannot pass a certain fixed limit of speed in locomotion because of the mere internal tensions which hold the tissues together in an order keyed to that speed, just as a certain type of wheel will permit of a definite number of revolutions per second. A certain mechanical harmony of number and size and function of parts seems foreordained in the nature of an organism, and so far as this is true the organism can be said to be organized internally by the forces which give it its possibilities of movement and action, as well also of its transmutation into other forms. I suppose it is largely a question of surface and

¹ It is interesting to note that, on the theory of individualism, immortality is an impossible surd.

other tensions due to the nature of protoplasm which makes a cell split in reproduction when it reaches a certain volume. But I see no *a priori* reason why it might not be said that the partition is due to a certain limit of complexity of organization at which a qualitative situation develops a pure quantitative difference. It is extremely doubtful, on mere abstract grounds, whether such a phenomenon can be fully explained by a mere plurality of forces operating in different directions. And it may very well be that a change in the nature and order of these tensions would result in the change in the size to which the cell may attain before partition takes place. And these facts may be dependent upon the environment in the sense that the nature and amount of nutrition available determines the strength of tissues in the cell. From this point of view the organism is ordered with reference to its environment, its real content is external to its immediate form, and thus it fulfills the formal conditions of individuality. But the determining condition is lacking to the life of the organism as such, and we must attempt to say wherein the organism as such fails to reach full individuality.

The question of final criterion is one of the nature and character of the principle upon which individuality depends. We have seen that the organism, while displaying the functions of life and growth and determination by ends, still in all these connections sooner or later reaches a limit beyond which it cannot pass. The question as to what fixes this limit opens up access to an area of fact whose law may be the principle which we seek. And it may be well to remark at this point that the question of reality centers around the body of fact which marks the point of difference between law and principle. The question therefore seems abstract and formal, but it must so far as possible be kept related to observable fact. I have already indicated a difference between a law that is constitutive and a law that is constitutional; the difference being that one is constructive of forms out of materials as found or given, the other indicates the order and plan and harmony of fact situations with no reference to their origin or creation. And, for the sake of having our result before us in advance, we may say that the law of the organic individual is constitutive, while that of full individuality is constitutional. The 'idealistic' doctrines that what is real is

always individual (but not for that reason 'specific'), and that individuality is real as a system of qualitatively determinable degrees, are taken for granted, and the proof for them is indicated in the development of philosophic thought from Plato to Hegel and on to our own day. To one who has missed the burden of that development our results, even if he can be convinced that we reach any, will doubtless mean little. But there is an apparent contradiction in the doctrine as historically developed, a contradiction which is merely apparent because it depends upon differences of interpretation of common ideas, and this discrepancy must be got rid of first.

I refer here to the ambiguity of the terms 'inner' and 'outer.' But I do not mean to remark merely the differences which come from the spatial and logical senses in which the terms are used. It is true that 'in' in the logical sense means inner in a way which it does not mean in the spatial sense. So that "in the room," "in the book," "indifferently," "in mind," "in abstracto," etc., may all show specialized meanings of "in" which differ among themselves in determinable ways. Similarly "out of the room," "out of connection," "out of gratitude," etc., may each show equivocation in meaning which is responsible for much misunderstanding. But what interests us here is the differences in logical implications alone in the use of the words. It appears that two characteristic types of uses for both words may be indicated, each of which represents the whole group of assumptions which makes up a logical system, so that the variations in the uses of the terms correspond to logical systems which are fundamentally different. That is, each of the uses represents its own characteristic type of metaphysics. Then it is not merely a question of spatial as against logical inclusion or exclusion that is the difficulty, but one of different types of logical inclusion and exclusion, in both of which space with its relations is merely a detail of fact. As two logical systems then the difficulty becomes the question of competing types of orders of fact, of two modes through which the reality of fact is expressed.

We have already used the distinction between systems of fact which are ordered or individuated internally and those ordered externally, and the distinction has appeared again in the opposition of objective to subjective. And it was clearly indicated that subjective had no necessary relation to the

meaning of the phrase "in the mind," a phrase which can be given no definite meaning for the simple reason that whatever is is in some sense in mind. Also little can be said of the attempt to distinguish the individual mind from the 'social' mind or from mind *in se*. Mind is something that is indistinguishable, not because it is a plurality of things that are alike, nor because it is an identity without differences, but for the simple reason that it is the sort of thing to which distinction does not apply, to the fact that it is a principle while all distinction is of fact, i. e., it is itself the ground of distinction. It is true that we speak of distinguishing principles, but we are aware that when the distinction is worked out the things that are set apart are facts, facts whose orders constitute principles. 'In mind' is then equivalent to 'in principle,' and the term subjective indicates a way in which facts are ordered or principled; and while space relations may even be the basis of such a subjective order, yet they do not determine the type of such order. Space relations may be 'in' the order without the order's having any reference to space, and a system of space relations may be either internal or external, subjective or objective, independently of the spatiality of the relations. That is, although a system of relations may be spatially determined, that fact itself does not fully determine the inner or outer character of the system even though spatiality is a necessary element in objectivity. Now, we have referred to the method of taking the organism as a point of reference of fact as a subjective method. It has been suggested that the practice in legal theory of taking the undefined natural person as the point of reference both in determination of legal principle and of practical applications in, e. g., a system of punishment; the practice of political and economic theory of taking a point of reference in the psychological being which is thought of primarily in terms of inwardly-referring wants and demands, or in terms of the outer objects of the want; of ethical theory, of accepting a point of reference either in the inner fact of feeling or in the outer fact of results; of religious theory, of adoption as a center of meaning the 'soul' either as a mythical inner something or as an external something to be attained; all of these theories suffer from the same weakness, and the pairs of competing theorists who have made up the history of thought in these lines had no real distinction between them

and represented the same circle of ideas. They have all assumed unconsciously that whatever it is that their thought refers to, whether inner and pertaining to mind or outer and pertaining to what is not mind, is simple and distinct or distinguishable and real, *in and through itself*. Now it may appear unusual to refer to this attitude as a type of logical order when order in the ordinary sense of the term is precluded by the definition. The real is regarded as a plurality of distinct things, each of which contains its own guaranty in itself, so that all relations seem excluded already by the attitude of thought. But the very fact of comprehensiveness which characterizes the thought process compels such thinkers to face the question of order, and the consequence is that an order is created by the thought which is inorganic to and dissociated from and superimposed upon the facts. There appears to be a choice then between *accepting* an order of fact which is itself a factual order, an order which is 'there' and natural to the facts on the one hand, or *making* an order out of the necessities of thought and superimposing it on the facts as given. The same abstract reason which leads one philosopher to postulate the self leads another to deny the existence of the self as guaranteed by any facts. Thus a hopeless chasm appears between the fact and the attempted organization of fact, with the consequence that the organization is abstract and lifeless, and stultifying to the fact whenever referred to it. Thus a mysterious problem arises in the 'relation' between the mind as order and the objects which are supposed to be the content of that order and thought is thus long disengaged from its real object in the attempt to explain the 'how' of its own method. The object is then through the mistakenness of the problem identified with the state of mind which has become so engrossing, the result being the subjectivism of a philosophy of inner states. But our point is that the inner character of the object is an accident of the fact that the wrong descriptive method was applied to the object. Instead of taking the object as it is, the method begins by inquiring about its origin, its structure, its content, in short not looking to the fact but away from the fact in its detached qualities and relations conceived in methodological terms. Then 'quality of content' becomes the real, which for want of meaning is identified once more with inner states. So that the philoso-

phy of inner states still refers to outer facts, but since its pre-supposition distorts the facts and then identifies them with inner states, it is still subjective. But 'subjective' then refers not to inner qualities, but to the detachedness of fact from the order which individuates it as fact.

Then the reference to the organism does not objectify. The organism is itself incompletely individuated by principle, and is therefore not complete as fact. The organism is not a full individual, and does not exemplify the principle of individuation. The attempt of the sociologists to force habits and instincts as organic reactions into objective form in social relations merely serves once more to distort the facts of life. Habits and instincts alone, however widely we may qualify them out of their ordinary meaning, cannot by any multiplication of their variety, or by qualification or approbation, be constructed into the order of fact which is represented in a whole of life.

III. QUALITY AND CAUSE AS LIMITS TO INDIVIDUALITY

The principle which guides the philosophy of 'quality,' which sees in fact primarily its distinctness and detachedness and specificity, is causation in the linear or straight line sense of the term. Causation is in this sense merely the attempt to take artificially isolated facts one at a time and by enumeration build up a universe. This is the infinite method of science in its research or laboratory form, the attempt to get 'all' the facts on the assumption that the truth is not complete until the last fact is in, that the truth, in short, is a matter of the number of facts. Even the generalizations of science, and some are very 'large,' are often taken as definitions of a key fact, a fact which carries the nature of the universe within itself, as e. g., the atom, electron, etc. But this is the simplicity fallacy. The straight line type of causation does not even give a clue to a world, or even to any conception which is suggestive of a world, or of an experience as such. The best it can do is the infinite process, a world of one dimension. The world of causation in the scientific sense is therefore a perspectiveless world, one without depth or breadth where nothing can abide what it is. In the world of facts each detail is hurrying on to become not its own larger self of fulfillment,

but its *next*; and the philosophy of the next is the obverse of the philosophy of the abstract *other*. But the philosophy which derives from science by an attempt at completion of scientific method through the elaboration of causal situations of specificity complicates causal series by discovering that they intersect at strategic points. Such an intersection and complication of causal sequences is the complexity of a "present" of consciousness or a plurality stated in terms of coexistence. This is the famous result reached by Kant in the attempt to identify coexistence with simultaneity, giving the concept of an infinite given whole. What is not observed in this connection is that such a whole is held together by the intent of the specific act of mind of the thinking subject, which is itself an assumption of isolation and therefore subjective. It is generalization forced upon fact by sheer psychological effort. Consequently it assumes the very thing it intends to explain, and further assumes it as inexplicable. The motive behind the whole process is the individual in the sense of isolated uniqueness, and the effort is therefore foredoomed to failure. It is an attempt of thought to force the facts. Then a generalization as a collection of *reals* is substituted for the real motive of thought, which is the generalization of the *real*; and real generalization is an immediate interpretation of fact. That is, the general as the element of order in fact is the order which is interpreted from fact and not imposed upon it. And the contradiction in the Humean conception is the statement that the order of fact is given with the facts, which would be true except for the assumption that it is given along with the facts simply with the status of another fact. A form of philosophy which tries to attain objectivity through the concept of cause, and which denies the existence of the "inner," itself becomes subjective through the self-subsistence of *another*.

The causal conception therefore in none of its accepted scientific meanings can be the principle of individuation. And since the causal law is the law of the organism, the organism is not completely individuated. It remains to show exactly why this is so. We see that individuation implies the completion of a situation of fact through the process of growth into an ordered form of the same fact which "bears its end in itself." This final ordered form is the same with the formlessness of the situation in its origin, and the only real dis-

inction between origin and end is one of growth degree. The situation is then inclusive of its degrees in growth history, and cumulative of its past toward an order ended in each degree-stage by the principle which unifies all the stages. For example, an idea is ended in its appropriate act, but the act which principles the idea is not any more nearly the actual physical activity which results than is the act as foreseen in the motive. The idea is the whole developmental system which includes the history of the agent, including also the causal relations of environment together with the system of purposes and attitudes which represent the interpretation of that history. That is, the idea carries its "end" from the beginning, and the end principles each stage of the development by appropriating each stage as means to the end. This appropriation is the adjustment of the environment to the purpose of the mind through action, that is, the end is not an abstract mental form but a complex of environmental fact. The idea is therefore ended in itself, principled by the law of its factual organization. Within this factual organization the whole matter of cause-effect is included as a detail—a necessary and important detail, but yet not of specific value in the sense that it determines the type or species of the organization, except in the case of mechanical orders. The causal law then applies to specialized relations within an order of fact, but it has nothing to do with the kind of ordering of the fact. It is nonsense to speak of "kinds" of order of which the causal is one. Cause does not mean real order; it means the opposite of order in its emphasis on the specialized as opposed to the specific or species-forming character of facts and thus reduces them to abstract centers of numerical and distinctive relations. Cause then isolates, breaks fact-orders into elements which can be disposed linearly. It therefore gives no hint of the wholeness of unity which characterizes fact in its immediacy. The multiplicity of fact which makes the concept of cause necessary is not the original, but a specialized and derived form of experience. It is the scientist who begins with multiplicity, and he begins there because he has already broken the unity of his experience with an assumption of method. Multiplicity is then not a character of fact but a preformed attitude, a prejudice in the strict sense. The artist, who faces the real in its immediacy, whether he be religionist or moralist or artist in

the specialized sense, paints the whole as meaning and then later delineates the detail of fact. It is so with the logician. The whole of meaning is the fact as order and the painting is done when it is expressed in the indefiniteness of color and form; the detail must be put in only for those who can see nothing else because of their prejudice of constructing things out of elements. The painter takes the distant view where facts run together. And 'impressionism' is regarded as a bogey by those who have eyes and see not, simply because it is a declaration of independence from the pettiness of being obliged to cast particular pearls before particular swine, an instance that art is for those who can approach the real by the broad high-way, and not by the sinuosities of endless detail. The organism, as causally determined, is then not the complete whole of individuality. The law of causation is the imperative of method: "next!" When causation is anything more it is logical ground and except for the confusion of cause and ground much science would show its own contradiction immediately.

The organism then as principled by causation is endless process in reproduction, and reproduction in this case can only pass on to the next by repetition. And as its process is not cumulative it is ended internally, itself as it is the only goal it can reach. Its utmost is accomplished in its own self-maintenance. It is in reality unprincipled, for there is no law of the end which carries its history to climactic issue in a perfected harmony. It is internally organized with reference to its own content and its content is its own status, itself. It is therefore subjective; and no descriptive science of it can ever give its truth the outward reference to reality. The organism is not therefore the individuality which human practical interests presuppose.

The interest in practical purposes uniformly results in the psychological interpretation of fact, and this is generally a reference to the organism, since psychological discussion centers for the most part upon the reaction. It has already been remarked that the 'man' of economics and politics is simply an isolable complex of immediate conscious states. And it is not surprising that the lowest of these states has formed the practical principle upon which actual practical life is supposed

under the influence of this theory to be organized. The dominance of the self-preservative instinct has led to the erection of greed into a principle of life, and our economic and political theory has been concerned necessarily with the mere maintenance of the physical conditions of life with little or no reference to the value and significance of life. Consequently social science has been interested in mere 'indispensables,' in the mere minimum of living which can maintain itself, the mere repetition or reproduction of individuals whose sum is the species. No further proof of such is needed than the mere mention of the emphasis which has been given of late to the "minimum wage" and the "subsistence wage" in the "system" called industry. Even when we begin to recognize the fallacy in the system we state it in terms of economic loss either of product or of 'man-power,' or at least in time and wages and health. What we have not been aware of is the creation of the subsistence-mind, the reduction of individual interest to the point where the mere maintenance of the bare form of life exhausts the worker's capacity for developing interests—the mind *adapted to its environment*. Whereas what is wanted in political life is the type of mind which is continually adapting the environment to its own purposes. Politics and economics, even the psychological species which has attempted at least to find human values, are thus after all limited to the circle of conceptions which get their meaning from analogy to the organism. They are therefore *endless* and *inconclusive*, and they can never hope to find truth within human relations. I have already spoken of the sociology which reduces life to causes in instinct and habit and custom—the epitome theory that life is a mere repetitive effort to continue in existence. It therefore reduces life to the facts of instinct, habit, etc. And the ethics of the point of view has exhausted itself with a description of mental states in an attempt to find peradventure one state that is unique as an ultimate state of 'conscience' or 'pleasure.'

IV. THE ORGANISM AND THE CONCEPT OF ORDER

The organism is then not the individual. The individual must be a form of life which is ended in itself through the comprehension of a content which is external to it. This form

is the order of content that is attained through growth as the cumulative process of history. We can not then start from instincts or habits or tropisms as organic facts and build up to the organic complex and on from that to the larger realities of social life. And the reason is that our interpretation of fact has limited the kinds of elements necessary to the higher forms of existence. The self-direction and will which is obvious in the relationally determined orders of men cannot be derived from the causally determined facts of habit. Spontaneity or initiative cannot be coaxed or hoaxed out of mechanism by any hypothesis which attempts to refine mechanism upward or purpose downward. On this sort of hypothesis we not only will never reach the real for the reason that the structural process is infinite, but for the further reason that we have not laid hold of the facts which lead to its principles.

This question of the principle of organization has recently led to very important developments in biological theory and to some very significant conclusions with respect to the nature of the organism. Most significant of these, for our purposes, is the tendency away from 'elementalism,' or the attitude which I have described under the form of the logical fallacy of the simple, and toward a conception of the organism as a unity of life-processes and structures in an integrated whole. This involves a radical change in the nature of scientific hypothesis used in biology, and represents a shift of point of view from that which attempts to work upward from the atom, to one which works outward from the idea of an ordered whole through functions of the whole as expressed in specific structures and activities. The method is therefore synthetic and comprehensive, as opposed to the older analytic and dispersive method. The appearance of works of men eminent in science under such titles as "The Unity of the Organism" and "The Organism as a Whole," seems to indicate a new logic of method for biology, or at least a tendency on the part of experimental science to come to terms with traditional logic. And this scientific concept of wholeness, if retained consistently as descriptive of fact, may become for science as it is for logic, the instrument for mediation between mechanism and purpose. And this mediation must be effected if we are ever to be able to pass from the facts of life con-

sidered biologically to the facts of life considered as phenomena of social science.

It is somewhat adventurous for one unacquainted with biology to undertake to state the argument of a biological work or to assess the logical meaning of a work in that field. And yet the dependence of social science upon biological fact demands just such interpretation. The attempt may not therefore be without some value. As I read Professor Loeb's "The Organism as a Whole" the argument seems to rest upon the following propositions: (a) Life phenomena are, from a structural, functional, or evolutionary point of view, all subject to physico-chemical laws. (b) Life activities and relations are continuous with physico-chemical processes in the environment. (c) Life activities and structures are dominated by the organism as a whole. (d) Life activities and relations, both inter-organismal as simple physical and chemical processes and intraorganismal, as tropistic phenomena, are mediated through specific substances.

These propositions rest upon an interpretation of the reproductive functions of the organism, with special emphasis upon the facts of growth, regeneration, and restitution, as these facts have been observed and controlled under laboratory conditions. The point of view rejects all reference to purposive elements in the explanation of life, not because of logical weakness of such a position, but because a positive description and explanation of the facts do not imply, as the author thinks, as necessary any reference to purpose. The work is not therefore primarily critical of any logical or scientific theory, but constructive of scientific theory through interpretation of fact. This method has its advantages; but it also leaves its own presuppositions more or less unclearly stated, and thus puts a rather heavy burden of interpretation upon the reader.

(a) That life phenomena are all, considered organically, structurally, functionally, and evolutionally, governed by strict physico-chemical laws will hardly meet with opposition from any consistent logical interpretation of life. Objection to such a principle will not come primarily from scientific and biological sources and since such interests as do object are not usually trained in the comprehensive modes of thought common to

logic, opposition will consist for the most part in mere negative denial of the 'sufficiency' of 'mere' mechanism. Or, when the attempt is made to attack the proposition by positive methods, the lack of logical knowledge is supplemented by appeal to mystical efficient causes or active agencies. Such criticism appears at first a little harsh, and should, it is recognized, be presented with caution as against scientific work as authoritative as that of Driesch, yet the criticism appears sound and therefore necessary. Driesch's conception of "entelechy" seems little more than a resort to the assumption of the simple, only it carries the additional implication that the simple in this form perhaps cannot, in any case need not, be strictly known, so that descriptive exposition of fact as justification of the assumption can therefore be dispensed with. Loeb is therefore justified in rejecting the resort to mystery, and in the insistence that explanation is descriptive interpretation of fact.

But does the alternative between elements and magic on the one side and strict physico-chemical law on the other, which we have already seen also implies elements, exhaust the actualities of fact in reference to the organism? Does not, in this case, the "organism as a whole" itself become regarded merely as an undifferentiated and homogeneous unit? The question appears, after all, merely as a recurrence of the old question of fact, and becomes in this connection specifically that of what is the organism? And it is this form of the problem that Loeb recognizes as insistent, and his work is a sincere and tremendous effort to answer it. Is the organism merely a more or less definite aggregate of structures with characteristic functions which assume external and non-permanent relations with other facts of the same sort in other aggregates of similar nature only more inclusive of detail and more complex? But this latter conception is merely atomism disguised under the mask of complexity, and an instance of the atomistic and granular theory of reality. In this case the concept of the organism would be reached through the process of building up to it by means of additive relations of detail. And this seems to be what Loeb does; he seems to construct the organism as a whole out of atomistic physical and chemical impacts and physiological tropisms. This seems clear from his reduction of instincts to simple or compounded tropistic

reactions. But this conception of the organism, it is suggested, rests upon a mistaken interpretation of fact, in this case the mistaken fact being just the *wholeness of the organism*.

But the other alternative in its characteristic historical form Loeb rightly rejects. As developed in the various forms of entelechy, spontaneity, efficient cause, energy, force, it has shown a tendency to pass over into magical agency. Thus Aristotle's entelechy becomes in the scientific and practical age a mythical cause or power, which assumed fantastic forms as creative will under the religious influence. Later, Hume perceived the reality when he argued that the element of order was "given with the facts," only he did not see the difference of principle between the sensuous data and the order which gave the data meaning. For Hume the order was merely another datum, and he did not see that its universality elevated it to the position of a principle. The order of fact which is universal in every experience is the principle for which Loeb is searching in the conception of the organism as a whole, and it means that science is adopting the logical conception of wholeness or organization as a constitutive category.

(b) It is this order, then, which is the fact. And Loeb sees the point clearly when he feels the necessity to account for the facts of reproduction and the consequent continuity of organisms in their species. It is the species then that is the ultimate fact, as the *law* of organisms. Then *organism* is the whole of law which specifies unities of fact in multilateral continuity. Organisms are not wholes, in the elemental sense, but *organism is whole*.

That the organism is not an element, either simple or complex, but a synthetic whole, is shown clearly by Professor Loeb's arguments in support of the proposition that life activities and relations are continuous with physico-chemical processes in the environment. The most obvious instance to be given here is of course the fact of physical and chemical continuity between the embryo and the parent organism, where the parent organism is the total immediate environment of the young form. But for a long time after partition in the case of many forms e. g., the human, the connection between the two organisms is quite as close, in physical or chemical terms, as when determined by spatial inclosure. And it is this

close connection that makes the question of heredity so difficult from any elemental point of view. Since the parent organism is the environment, and since the relation of the parent organism to its physical or natural environment is equally close in many respects as that to the offspring, there is no positive line of demarcation which clearly delimits one organism from another nor is there always an absolute line that can be drawn between an organism and its environment. It is therefore often impossible to determine just where within the total situation of interorganismal and interrelational connections between organism and environment any given character takes its origin. The character would be 'acquired' if we chose to connect it with its more obvious and immediate physical 'source,' 'inherited' if we found its connection with more remote facts of intraorganismal life more interesting or useful to our scientific purposes. And the argument for definite distinctions between inherited and acquired characters is just as meaningless or otherwise as is the assumption on which it rests, viz., that the organism is an exclusively defined and self-contained entity or element considered as the absolute source or point of origin of the character in question. But it is notorious that the seat or origin of characters, or their point of inherence in inter- or intra-organismal life, cannot be isolated by any theory of evolution so far constructed. It is the question of origin of variations, which no scientific theory, so far as I know, attempts to answer. Selectionists posit the variation as a simple and unanalyzable element, while mutationists stuff it or load it with such complex 'possibilities' as life in the species relations requires. And in either case the variation is an hypothetical simple.

The one characteristic fact with respect to the nature of the organism is then *the continuity of the life of organisms*. And this continuity extends far beyond mere continuity among organisms considered as units, and includes relations of organisms to what are ordinarily considered inert or inorganic objects and forces in the environment. It is difficult to understand the fact which Professor Loeb has demonstrated and whose importance he has so clearly understood, viz., the fact that a developed organism may be produced by simply pricking the skin of the egg with a needle, on the *omnes vivum ex vivo* assumption. Even if it be argued that all the conditions

of a developed organism are present in the egg, and that these conditions as forces were merely released by the physical fact of abrasion of the membrane, it would yet be true that the conditions would never be realized in the organism in the absence of the physical fact of pricking or of some other force which has a similar effect. And the argument that some other force must have been present though unobserved, which as a 'life' cause operated to set up the process of development, is putting too heavy a strain on the assumption, and forgets that the assumption itself rests for its validity upon facts authenticated in precisely the same way that Loeb is establishing the possibility of the growth process arising from a fact which has no other relation to growth or life processes. The continuity of life processes in the organism with the environmental processes in nature, which are conceived as physico-chemical and mechanistic, seems as well established as most scientific conceptions of the same comprehensiveness and generality, and the obligation to accept it appears equally binding.

The principle of continuity of life is therefore, even in its biological formulation, capable of being employed as a formulation for a comprehensive theory of social relations. Nor does it require more adaptation than is necessary in transferring any 'large' idea, as a norm taken as abstract plan or constitution, to a new body of content. It is a relatively simple matter, taking the idea in its dynamic or executive character, to apply it to the facts of 'will' as the sum of tendencies toward corporate organization of persons into social and political bodies. Again, between the two extreme forms of biological continuity in organic mechanism and the chosen or willed corporate organization of persons as the embodiment of political 'consent,' the habitual or imitative 'social' continuity which is presumed to rest upon causes may be considered as a means. No precise point at which cause passes over into purpose, nor where mechanism gives way to spontaneity, need give any concern. For, all such assumptions of abrupt transition imply the governing idea of simple elements ultimately distinct, and on that assumption growth process is inconceivable. You cannot have continuity after having postulated discontinuity as final. Our conception of continuity must be thorough-going, absolute, if we are to have any alternative to the assumption of relations as atomistic elements controlled

by the laws of externality. That is, to make the idea of relation, as a tie between differences, significant at all, we must posit an ultimate unity as interrelatedness. But unity is then continuity. And continuity as fact is the subject matter for science whether natural or social. The sociologist's impulse to find the causal, i. e., the continuous or logical, ground for social fact, is then justified; only, it is the universal as the social continuum which is the criterion of the validity of causal relations, and itself the cause or fact. Social causes then become grounds.

(c) Then the proposition that life activities and structures are dominated by the organism as a whole is the biological form of the logical proposition that the universal or 'species' is the point of reference for explanation of the particular. It is a wholesome sign that science is undertaking to go beyond mere generalization, which has been too often confused with the appreciation of the universal. The taxonomic generalities or generalizations of biological theory are in the end collectivities, and when taken as indicative of real species, make of biological evolution a peculiarly artificial affair. Spencer's conception of the process of scientific thought as rising to higher and higher generality resulted, as it could only result logically, in the apotheosis of the *circulus in probando* in the conception of cycles of evolution and dissolution. It is thus a rare specimen of the apotheosis of mere repetitive process, the 'heterogeneity' which is meaningful only as the logically necessary counter-assumption to reality embalmed in the fixity of homogeneity. Professor Loeb's conception, then, is a final disposition of the notion of 'elements,' and an attempt to turn scientific research into channels which may be shown as ultimately confluent with those which have carried modern logical research. The organism is then the synthetic whole of structures and functions, the ensemble of organismal-environmental relations, which, conceived as the ground of variation, gives endless content of fact as material for biological science, and conceived as the ground of law in the universal, makes possible the ended, i. e., objectified multilateral continuity of thought and life. Considered as individuality, the organism is thus the ground of life both in the natural and scientific or factual sense and in the sense that life is the essential continuum of thought.

But there are very real difficulties. One of the most important and one which, like the physico-chemical assumptions of Professor Loeb, seems to involve the conception of organic individuality in contradiction, is the tendency to regard the organism itself as an element. It thus tends to oversimplify the notion of the organism to regard the unity of the organism as the *unit* of life in the sense that the extra-organismal references to the specific or whole have no meaning beyond their self-contained and exclusive existence in the particular form. It is the specifying, or species-forming universal, not the exclusive and particularizing characters of the organism that constitute its reality. It is the overt and outward facts of life that are common to all forms which, as unified in the specificity of the organism, make the organism the medium of the continuity of life. No other interpretation can give a consistent account of environmental 'influence,' or prevent the organism from becoming the support of the atomistic or elementalist theory. And it is the failure to keep in mind the idea of unity which makes the tremendous difficulties which arise from applying the ordinary scientific or sequence idea of cause to the phenomena of life. From the point of view of cause thus conceived, life is just the impact and 'reaction' between the mutually exclusive organism and the environment, consequently friction and struggle and negative reduction are taken as the content of development. But development is thus a negative and retroactively levelling process, hence Spencer (whose influence is still pronounced) has no alternative but to conceive an unwinding process in dissolution as coördinate to the 'synthetic' process. In order to avoid these consequences the organism "as a whole" must find its wholeness *within the continuity of organisms in species*, else the facts of reproduction, regeneration etc., as well as the more specific problems of heredity, will become unintelligible in the question of the ultimate point of origin of an element. This means that none of the important functions of the organism can be understood without their being referred outward beyond the organism to the continuity of organisms. Organic functions are not explained by reference to the isolated organism. Interorganic functions are at the same time *intra* organic functions. The individual is always an individual *of a species*.

And this reference to elements would mean the isolation of

the organism from its environment, each of which would be considered as a self-contained and exclusive entity which could act upon the other only in the way of external incidence. Then, life being attributed primarily to the organism, how the environment is to maintain its self-contained existence would become an insuperable difficulty. Nor would the tendency to refer evolutionary development primarily to the action of the environment upon the organism, which seems to be a common assumption, be made intelligible, after the organism, as the distinctively living element, is isolated and opposed to the environment. The point of view tends to neglect the fact that *the environment of organism is primarily organisms*, the environment of life is life, and that the organism itself has meaning primarily in its reference to functions which, like reproduction and heredity, inhere not in the organism as isolated but rather in the continuity of organisms. The relation of the organism to its environment is precisely similar to and continuous with that of structure to function within the organism, and just as no explanation of the relation within the organism is possible otherwise than by assumption, so theories of evolution quite generally cover the organism-environment relation with the assumption that is most appropriate to their purposes. But the relation is taken for granted, and differences in the nature of the relation as represented by different theories merely indicate the difference of points of view and purpose of the theorists. But the assumption indicates in any case that the relation and the fact system to which it refers is recognized as an immediate unity, a unity of experience given directly along with details of quality. The unity is, like space and time, "an infinite given whole," and so its recognition is unconscious. The relation of the organism to its environment is therefore the important question, since the character of the assumption we make with reference to that relation will determine the nature of the logical system which for us constitutes the world of living things. The relation stated in factual terms emphasizes the disparity of particularized forms, hence science is concerned fundamentally with descriptive and classificatory systems in which much depends upon the exclusiveness and uniqueness of detail. But descriptive and classificatory systems have little to do with the law of the nature of things, which is appreciated characteristically as the immediate unity of fact

in a present, and as the immediate multilateral continuity of fact in a continuous or organized whole of experience such as the organism. And the distinction between unity and continuity can be expressed as that between the presented, exclusive, self-contained, etc., on the one hand, and the present, appearing, unfinished, incomplete, etc., on the other; but the distinction thus made to rest so heavily on temporal considerations is not of much consequence for logic. The important matter is that the relation of organism to environment is assumed as immediate unity, and unity is the static expression for what from the evolutionary point of view is dynamic and progressive continuity as implied in logical systems—growth. The last phrase “as implied in logical systems” distinguishes the wholeness of an order as a positive and creative ground of qualitative distinctness of the real from the temporal and causative aggregate which is characterized by processive repetition to infinity.

It is clear then, that such organic functions as reproduction, restitution, and regeneration, which are assuming a central position in biological thought, may not be organic functions at all, but objective and universalized aspects of the organism-environment relation. The situation may be conceived after the fashion of mathematics, and the relation expressed either by saying that the organism is a function of the environment, or that the environment is a function of the organism, or that both organism and environment are functions of their own unity taken as whole. But in any case the emphasis is upon the immediacy of the unity between the two. And the significance of the unity may be shown by reference to the fact that evolutionary theories are approximately equally divided between those which regard the organism as a product of the environment, and those for which the environment is largely a projection of the life of the organism. The idea is then not the organism as the unit or element of life, but the unity of the life of organisms. In this sense the conception of the organism as a whole becomes not merely a principle of biology, but a law of logic. The organism is an imperfectly realized form of individuality; or better, it is a distinguishable impulse toward the realization of Individuality.

(d) Another of Loeb's assumptions is perhaps hardly so significant from a theoretical point of view. It seems to be

based upon the result of recent studies in endocrinology and more specifically upon the theory of hormones. The author's point of view is difficult to state, but seems to be embodied in the proposition that life activities and functions, both intra-organismal, as simple physico-chemical processes, as well as interorganismal, as tropistic phenomena, are mediated through specific substances. That is, activities within the organism which sustain the organism's life as well as those activities which restore and amplify the organism from within in the processes of growth; also activities of organisms which imply reciprocation of other organisms in the process of species reproduction; all depend ultimately upon a specialized substance and flow from it as its peculiar function.

In connection with such a view there are many profound difficulties, as there are with every ultimate pronouncement of science. I suppose the important question from a technically scientific point of view would have to do with the possibility of finding and isolating the peculiar substance¹ in each specific case. That, however, is an experimental problem, and, while it is one of the modes of validation of a theory, other considerations may show whether or not the experiment is worth while or is likely to be followed with the desired results. An experiment which, if it succeeded in the way intended, would overthrow all the logical connections of the system which made the experiment possible and desired, would have one of two important consequences. Either it would destroy the system of knowledge which gave the suggestion for the experiment, in which case it would throw the science it represents back upon desultory and undirected observation *de novo*; or it would discredit experimentation as a method of knowledge and thus call the possibility of valid knowledge in question. There is of course the third alternative that the suggestion is false; that the system of knowledge as accepted does not require the experiment indicated. And I suggest that the experiment which would isolate specific substances in the connections indicated by Professor Loeb is uncalled for, and if it should succeed it would destroy the conception of the organism as a whole so completely that there would remain not one biological stone upon another. In other words, Loeb's

¹ Ritter, *The Unity of the Organism*, Vol. II, p. 119, says that "few . . . have been isolated as definite substances."

assumption of specific substances as the media of the fundamental biological relations is in direct contradiction with his doctrine of the organism as a whole, and rests upon the two or three fallacies which we have been criticizing throughout this work.

We shall therefore be obliged to indicate the criticism again. (1) In the first place, the specific substance is the homogeneous simple once more, the element so simplified that descriptive discussion is not required. Its simplicity even approached, with Weismann, complete immortality. It appears therefore that the specific substance is a hypothetical, or methodological, entity, and not a physico-chemical one. Then on the assumption of the simple the limiting of biological relations to the physico-chemical is questionable. (2) In the second place, the assumption of an entity which is responsible as cause for a function is a substitution of magic for scientific method, and makes connections of logical necessity in a system of validated knowledge impossible. It therefore negates the very conception of science as ordered experience. In opposition to this we shall propose that the concept of function is itself entitative, in that it, by itself, implicates real wholeness as ground and so requires no specific cause. (3) Again, and this is a consequence of (1) and (2) above, the notion of specific substance is either a contradiction in terms, or just the unconscious assumption of wholeness, or integrity of the real as described in its relation to particularity. That is, the idea of substance as matter, possibility, or as "instrument," carrier, medium, etc., of a function, is in direct contradiction with the idea of specific either as that which pertains to species considered as the principle or law of real continuity, or when the term specific means to refer to content considered as bare and immediate particularity. Or, the two ideas when brought together with a meaning reference to real content mean precisely the whole as a system of functionally related structures, or of structurally related or conditioned functions. The latter is the significant idea. The content of particularity as bare immediacy is, of course, the material upon which the unity of substance and 'specificity' is effected.

Each of these arguments requires some further elaboration. (1) It hardly seems necessary to single out a specialized substance to account for the functions of regeneration or repro-

duction, since the one-to-one combination of structure with function is not necessary in other cases. It is of course true for ordinary purposes that we can connect the back and forth movement of the forearm with a flexor and an extensor muscle. And for ordinary purposes it could be said that the stomach is the structure which performs the function of digestion. But even in the simplest case¹ of this kind there is a great variety of other facts to be considered. The extension of the forearm would not be possible unless other muscles than the extensor collaborated with it, to say nothing of the auxiliary functioning of ligaments and other structures. Further, there are immediately involved the facts of innervation, and this in turn involves the system of nutrition and circulation. This is of course obvious. But the principle is, that the performance of any function is the consequence of the mutual and ordered collaboration of systems of structures, and that these systems of structures involve perhaps the total of all substances that have to do with life, i. e., the organism as a whole. It is therefore difficult to see why some particular substance should be singled out to account, say, for the inception of the regenerative or the reproductive process. Loeb has himself pointed out that, given the system of structures called the egg, the process of the formation of new individuals can be set going in a number of ways. It is true perhaps that in nature the presence of a "specific substance" is necessary to the inception of the reproductive process, but it is also probably true that this "substance" is itself organized, which implies within it a system of substances organized as unity. Then to precisely which of the constituent substances in the spermatozoon is reproduction due? The fact seems to be that the function connects causally with a complicated system of mutually determining structures, or better, that a function is precisely the mutuality of a system of structures as determined to and by an end.² There seems then no necessity for the assumption of specific substances so far as the facts are concerned; it is

¹ This suggests that Loeb's conception of tropism is itself infected with the simplicity fallacy. Upon close consideration, the tropism is seen to be far from simple in any sense; its outlines as boundaries separating it from other facts simply cannot be drawn.

² The end of course is no mystical final cause which makes so much trouble for the scientist, but merely and simply the fact that the system of structures, as organized fact, tends uniformly to completion in a more comprehensive system of fact.

necessitated merely by the sequence theory of causation and is a methodological device. It is, existentially, therefore, quite as mystical as the entelechy which Loeb fears so much. But neither specific substance nor entelechy considered as an entity is necessary.

(2) If it is true that science is seeking order and systematic regularity in the facts of experience or nature, then the demand for a single cause for each single event will have to be given up. It has already been shown how this involves the infinite process. The one-to-one relation of cause and effect is not the proper procedure of science outside of or beyond the most immediate necessities of the manipulation of apparatus. Somewhere this process of experimentation and manipulation of machinery must get over into and become knowledge, and knowledge is universal. And as universal it represents the comprehensive and multilateral order and system of things taken as wholes. Nothing short of this can establish the validity of any relation, however simple. But as argued above, the one-to-one relation of cause and effect has nothing to do with functions. The apparent necessity of referring a function to a special structure is due to a misconception of the nature of a function. It seems to be implied that a function has no entitative nature or status, that it is an unreality which requires to be actualized in a substance. But the function is in itself as substantial as other facts of any kind. It is as "isolable" as other facts and for the same reasons, that is, it can be abstracted from its place in an order of fact; but like any other fact it loses its reality as thus abstracted just as does the hardest of brickbats. It therefore has a status within a system, a unique status like any other fact, but like any and every other fact, its nature and substantiality do not consist in its causal or other relation to any other single fact in that system. Its relation to any one fact is mediated through and constituted by its relations to all other members of the system, and there is no ultimate reason for even the limiting of its relations within the system. Just which of these relations is substantial will depend upon the purpose which singles it out, which means that the reference of a function to specific substance has only a pragmatic value. Functions are entities like other things. They imply ultimately "the organism as a whole" as ground, and so require no specific cause.

(3) The idea of a specific substance is just what Professor Loeb does not need and cannot accept if he is interested to establish the notion of the organism as a whole. It represents therefore a relapse even from his dogma that all life phenomena can be explained as matters of physico-chemical law. That is, taking it for granted that physico-chemical law is the necessary foundation of life, it, i. e., specific substance, is even then precisely what is not required, either as an entitative conception of substance or as a directive motive of thought. It has therefore neither metaphysical nor logical status. Again, it does not save Loeb from the mystery of final causes, the one attitude he seems most concerned to avoid. That is, he is very careful to show that the 'organism as a whole' is not to be conceived as a purposive agency or as having metaphysical status; but it is just these characteristics which he attributes to the specific substances nevertheless. It is no escape from final causes to postulate a temporally first cause as origin; it merely means that the cause chosen is a (temporal) end of the repetitive process. We do not escape finality by dodging behind either the first or the last cause, but merely uncritically accept a contradiction. But it can easily be shown that the organism as a whole has nothing to do either with metaphysical entities or final purposive agencies. The organism as a whole is a functional system of observable and describable fact; and the metaphysical and mysterious, including the specific substance of Loeb, arise in connection with it just because of the defective aspects of observation. All that is needed is to describe the organism as a whole as the system of fact that it is. We shall see in the next chapter what characters such description discloses.

V. THE ORGANISM AS A PRINCIPLE OF ORGANIZATION

But before going on to attempt a constructive view of the logical nature of the organism as a whole, it seems desirable to examine some further biological writings. 'Elementalist' writings are negligible for the reason that they avoid the fundamental question as to the nature of life, or rather preclude any consistent conception of life by the adoption of the atomistic theory. It is to be confessed that the problem here is to prevent the organismal point of view from proving too much.

So overwhelming seem the proofs for the synthesis of life in the organism as the one instance of real unity, that the danger is to avoid making the organism as a constitution of life functions the special and peculiar form of reality, whereas what is intended is merely to show that it is an instance of a type. This is the fallacy of the individualism which rests upon the assumption of the uniqueness of the natural man. But the difficult matter, and our problem here, is to show that the individual biological organism occupies no unique place in the system of life functions and structures which constitute reality; but that its supposed unique importance subsides to a low position in the presence of other aspects of the real. Its uniqueness will be found just in the element of commonalty which allocates the organism within a larger and more comprehensive system. The uniqueness of organic individuality then becomes the very important fact that the organism, for the interpretation of distinctly human and social facts, is the first and simplest of individualities to show unmistakable elements of completeness and independence and thus to suggest the principle of individuation.

This Ritter sees clearly. In "The Unity of the Organism" the author, using the language of Wilson, sums up the various aspects of the problem with the statement "that the cell cannot be regarded as an isolated and independent unit. The only real unity is that of the entire organism, and so long as its cells remain in continuity they are to be regarded, not as morphological individuals, but as specialized centers of action into which the living body resolves itself, and by means of which the physiological division of labor is effected." I do not pretend to understand the specific meaning which such a statement as this possesses for biological theory. But its value for the logic of individuality is fundamental; it is the experimental confirmation of the main thesis of the logical conception of reality as unity. And it is further a striking fact that the formulation of the biological form of the theory has led to the employment of much the same language as has been used by the logic of unity since Plato. It is therefore to effect a point of common ground between science and logic when Driesch resorts to such terms as "totipotence," "prospective significance," and "harmonic equipotential system." This is peculiarly important since these terms "concern primarily the cells

of the embryo,"¹ which indicates that instead of the cell being the element of the organism, *the organism as a whole is the logically necessary presupposition of, and as such the 'element' of, the cell*. It is in connection with the problem of regeneration or rehabilitation of mutilated organisms that the most significant facts of the life process have recently begun to appear. Here it seems that phenomena of cleavage, of molecular behavior and of cell-lineage become relatively unimportant, the chief reason being perhaps, "that regenerative processes so frequently involve considerable masses of more or less differentiated tissues rather than individual cells. A sort of mass action or mass performance takes place with little or no regard to the individualized activities of the constituent elements whatever they may be, cells, nuclei, centrosomes, chromosomes, or what not" (Ritter, I, p. 180). Again, Ritter, quoting Morgan in criticism of an elementalists' views, reaches this conclusion: "It is by no means to be granted without further demonstration that the properties of the whole organism are only the sum-total of the action of the individual cells. If, as seems to be the case, the cells are organically united into a whole, the properties of this whole may be very different from the sums of the properties of the individual cells, just as the properties of sugar are entirely different from the sum of the properties of carbon, hydrogen and oxygen" (Ritter, I, p. 182). The importance of the cell as a typical structure seems not to be questioned in these biological investigations. The question is one of the *degree* of difference between the cell, which must, it seems, be recognized as a highly differentiated structure, and other still more highly differentiated parts. It is then a question of the position of the cell in the complex of relations and conditions which constitute a system of mutually determining parts. Driesch² has very strikingly explained the causal relation as simply the most significant of these conditions, and reaches the conclusion that the cause merely indicates the "location" of an event within a characteristic system of conditions. The continuity of the cell with other structures, that is, the indefiniteness of the distinctions which set it off from other parts of organisms, begins to appear well established in experimental biology just

¹ Ritter, *The Unity of the Organism*, I, p. 205.

² *Science and Philosophy of the Organism*, London, 1908, p. 99f.

as it must be the conclusion reached from logical considerations. Ritter sums up the criticism of the cell-theory thus: "We have now passed under review several large and quite distinct groups of knowledge pertaining to those biotic objects called cells, all of this knowledge favoring the interpretation of these bodies as differentiated parts or members of the larger bodies to which they belong. They come into existence one after another as a consequence of the growth and differentiation of the organism, and in strict subordination to its needs. In a word, we are led to see that cells must be regarded as *organs* of the organism, just as muscles and glands and hearts and eyes and feet are so regarded. They undoubtedly constitute a class of organs rather sharply set off from all other classes, but this should not be permitted to obscure the equally important fact of their always presenting those attributes which are most general to all organs, namely those of origination by the growth and differentiation of the organism, and being functionally subservient to the organism" (Ritter, I, 190-1).

The organism, then, is continuous with the "self-equilibrating system of phases recognized as constituting the cell." "But when the perception is reached, as it is through our examination, that in reality the term 'organism' should take the place of 'cell' in biochemical language the organism no longer appears a morphological entity merely, but as a dynamical, a physiological entity as well, and the 'unknown factor' is supplied in the 'organism-as-a-whole'" (Ritter, I, 195). The study of the organism is then a problem of natural history, rather than one of analysis of substances into elements, and this extends to the inclusion of the psychical life of man, since tropisms show an "inevitable organismal trend," and are "probably, beyond question adaptive in fundamental nature; i. e., they work in the interest of either the individual as a whole or of the species to which the individual belongs" (Ritter, II, p. 222). This then extends continuity to the inter-organismal relations which constitute the ground of species, since "all biotic organization is anticipatory in various ways, but animals are almost exclusively anticipatory in action" (Ritter, II, 223).

The conclusions of these biological studies are involved and intricate, and their importance for strict biological science is

beyond our reach. Some of them, however, are of great consequence to the logical question of continuity as a function of individuality. Science seems to have demonstrated that individuality considered in the old elementalist sense of isolation, uniqueness, and homogeneity is meaningless, since it reduces to absurdity when applied to the more important facts of growth, reproduction, regeneration, etc. And it seems necessary to regard these latter classes of facts as essential to the understanding even of the simplest forms of life. One question,¹ taken generally by the scientists as fundamental, we shall ignore. This is the question as to whether the laws of life are physico-chemical and strictly mechanistic in their implications, or are purposive and anticipatory. The question is of relatively little importance in its scientific formulation largely because purpose seems to be understood as a mandatory emanation from 'higher' forms as applied externally to and imposed upon 'lower' forms. But this authoritarian aspect of law we do not accept even in human relations. That is, the law of the scientist is to his own mind not taken as entitative, and therefore not constitutional to the facts he regards as real. In this case law of course is external and the essential nature of fact is its self-inclusive distinctness, with the consequence that there must be a breach between fact and life which is final and which reduces the notion of order to quantitative ultimates in juxtaposition. This is the interpretation of scientific law, and it has been for two centuries the basis and model of political and civil law. And it is even now being demonstrated to mean not law but utter lawlessness, the *reductio ad absurdum* of the conception of law. Ritter has, however, avoided this consequence, and he has done so by maintaining an attitude of openness to the facts. The question of law is itself one of fact, and relates to the element of stability in facts which becomes the ground of continuity.

VI. ORGANISM AS A LOGICAL CONCEPT

But the point we wish to carry in the discussion is that, just as the cell loses its exclusive and discontinuous uniqueness

¹ There would be no inconsistency, at least, in showing that mechanism and purpose may be harmonized by their being complicated within the same unities of fact, and both to be necessary to the performance of function which is the ground of the reality of a fact system.

when its own inner constitution is laid bare and its external relations to the whole are clearly seen, so the organism becomes important through the position instituted for it by its own inner nature, in the series of living things. The organism is, like the cell, a "polyphasic system," and is to be understood only through such an analytic history of its life-continuity as will clearly display the principle which unifies its many forms. The organism is, then, the *law of organisms*. The biological sciences deal with *organisms*, and it is only when they leave the restricted confines of multiplicity of organic facts in the interest of synthesis that they approach a view of *organism*. This latter, organism, properly universalized as law is the proper subject-matter of the logic of purpose, and the scientific account of the organism-as-a-whole quite properly becomes matter of speculative logic. The significance of the conception of the organism-as-a-whole is that the organism as a particular has meaning only in its reference to the wholeness of life. And the wholeness of life, as the stability of the system of lives, gives to the term species whatever concrete meaning it bears. The species is, with respect to its aspect of law, universal, and with reference to its content in a plurality of particular forms, concrete—the concrete universal. But with this consequence the organism loses the character of exclusive wholeness which it bears when contradistinguished from the cell. Its wholeness is unilateral as exclusive, and refers only to the continuity of its phases in descending order toward 'simplicity.' That is, as compared with simpler forms, particularly the cell, it approaches by contrast the status of a law; but with reference to lower forms as 'elements' its universality is curtailed to consonance with the characters of forms regarded as elements, and thus it is limited to the status of a law governing only the quantitative aspects of fact. The organism in this sense is the sum of a number of cells, the combined total of whose activities constitute the functions of the organism. This statement of the facts is of course true; but it is not adequate, and leaves all of the important aspects of organism untouched.

The other half of the truth which must be added here, in order to reach an adequate conception of the organism as the individuality which it is, embraces the descriptive account of its laws within the species or "social" complex where it in

its turn functions as an element. In this case we find the organism's function to consist in the comprehension of the external facts of species—life in the form of an end appropriated to the fulfillment of its present activities. That is, what the organism means is the corporate whole which it would be were all its activities fully rounded out in the end and the accomplishment of which would universalize the organism as law. And this is identical with the statement of the principle of individuation: a situation of fact ordered with reference to an end which as law effects the continuity through growth of the situation of fact with its species or universal; and its importance from this point of view lies in the fact that it comprehends within itself the constitution of a system of higher individualities. But this is the principle which we have found to underlie all forms of individuality wherever found; it will therefore hold of all the specialized forms within the "self-equilibrating system of phases" which we know as reality. The significance of our principle lies in the obligation which it imposes upon the understanding in the process of comprehending the facts of experience; and the task which it lays upon us is that we see the realities of experience in the corporate forms which give endedness or conclusiveness to our synthetically conceived plans. And this is merely saying that our thought about reality must, as the subjective aspect of purpose or the imaginative capacity of prevising ends *ab initio*, objectify itself in the common externalities which mutualize human experience in an ultimate public end.

But this language is merely a generalized description of what we have already (in Chs. II and III) attempted to portray as the comprehensive system of actual social relations. This description, more or less disorganized and chaotic as it has been necessarily made through negative criticism of the socialized mind and the individualized mind, we have attempted to give positive form by looking at mind as a characteristically institutionalized entity. It has not been the purpose of our account to argue that mind either as individual or 'social' is *influenced* by the institutions of life. That statement would, of course, be literally true, but it would be correspondingly unimportant, and would presuppose precisely the proposition which we cannot accept as principle. It presupposes a unique and given mind, a mind uncritically accepted

as the point of origin and explanation of all the vexatious questions of either personal or social life. In short, it presupposes a magical entitative agency which, while it does not require to be understood in itself, yet is the principle of explanation for all that is. As an ontological concept it becomes the ground of all reality, and, just as its logical and scientific use involves magic, so does its ontological use wind up in the uncertainties of mysticism. Not that we reject mind as the essential form of reality, but we reject as vigorously as possible the assumption which finds the essence of mind in the distinction between it and the things that influence it or react upon it. Conceptions based upon this distinction come to grief in the murky exclusive uniqueness and complete self-inclusiveness and sufficiency of mind which robs it of any possibility of moral or universal quality.

The conception of institutionalized mind does also not imply the mind as given, influencing or acting upon, or reacting to, institutions which are also given. It is true that, in a way, both mind and institution must be presupposed; and there is a valid meaning involved in their interactions. But the significance of social, legal, political, religious or moral theory or practice depends precisely upon the type of interpretation of those interactions which such theory involves. It has already been suggested that the prevailing type of interpretation in all these fields is atomistic and mechanical. And they are such just because they all rest upon the assumption of distinctness between mind and its object, man and his purpose, life and its objective institutionalization, in general between means and end. The problem is precisely one of seeing the unity and continuity of means and end in such relations as that between mind and object, life and objectified purpose. The traditional modes of approach to the problem all either imply that institutionalized life is a form of mind, or that mind is somehow a specialized product of institutionalized life. Both are partial and onesided, and at some point involving a question of human destiny, each will collapse and leave purpose not where to lay its head. The tragedy of Christian idealism sinking into the mire of mere ignorant prejudice in the presence of the problem of war is a case in point.

What we mean to say here then is that mind *is* just the synthetic purposiveness of institutionalized life, and organism is

its overt form. Mind is the constitutional law of reality embodied in the various forms of purpose as purpose becomes organized, i. e., assumes organs, and thus becomes effective. As law, it is the synthesis of just those purposes in stable and permanent objective forms. The study of these characteristic forms in their universal aspects will then give us the genius of the law of life as mind. These forms as known in experience are the mutualized forms of purpose as objectified in the common-ends of politico-moral life—corporate associations.

It will be noticed that the main presuppositions of both vitalist and mechanist have been ignored in this discussion. But they have not been avoided because they are not interesting or because their importance has been regarded as not justifying consideration. Our point of view has attempted to go beyond the sphere where mechanism and vitalism are final distinctions. Consequently, their importance can be recognized for the attitude which is limited by the ordinary presuppositions of science, and a secure position given them in a larger sphere than that which any science can give them because of its methodological limitations. From our view, the conception or category of dynamic or functional order is cosmic in its reference, and is therefore inclusive of the lower concepts of mechanism and vitalism in a synthesis of the whole which as order gives to both conceptions whatever meaning they have. Loeb's insistence, therefore, on the finality of physico-chemical law, and Driesch's equally vehement emphasis on the factual character of entelechy both may be true realities within the fields which their respective presuppositions prescribe to them. But these fields are limited and partial; they are but provinces in the imperial realm that is governed by the higher prerogative of functional order. This means for the scientist, as is already in some quarters fully recognized¹ that sooner or later a wider philosophical interpretation must be sought in order that the conclusions of science may have that mutual compossibility of ordered truth which the idea of a world implies and presupposes. Under such conceptions of a world-order as the idea of a whole of experience demands, the categories of vitalism or teleology and mechanism will find their proper places as representing entities individuated by the syn-

¹ L. J. Henderson, *The Order of Nature: An Essay*. Cambridge, Harvard University Press, 1917, p. 9.

thesis of their overt relations to a higher individuality; entities whose inner constitution consists of a synthesis of its own wholeness with the wholenesses of its environing individualities, the latter of which largely predetermining (Henderson, p. 7) its nature. It is this stability of status of an individuality within the matrix of environing individualities that is meant by mechanism. But the stability is not fixity; it means the constancy of reference of a lower individuality to a higher in a system whose dynamic character imposes upon the lower individuality the necessity of the concrete and specific processes of growth. And at this point necessity is not in principle distinguishable from obligation, or connectedness in reason, which is the law of the highest aspects of life where growth processes are concrete and universal. Then vitalism has come to terms of harmonic unity with mechanism in an ordered whole whose constitutional law represents a synthesis of inertia and life, of necessity and obligation, of law and principle, of cause and ground. And the scientist has by the same living necessity become a philosopher (Henderson, p. 9). But a certain caution must characterize the use of such conceptions and their precise meaning must be kept clearly in mind. When necessity, or subjective inner compulsion, and obligation, or ordered freedom, mean the same thing, it is because they both get their meaning from the inevitableness of constitutional organization within or autochthonous to an individuated whole, and not from the mere unavoidable contact among elements which show no functional but only external and determined relations. Yet the withinness or uniqueness of individuality is not an exclusiveness of external fact, but individuality is precisely the ordered form of that fact. The individuality is the universal whose concreteness is precisely the content of fact which constitutes its own environmental conditions. Its conditionedness is then neither inner nor outer, neither causal nor final, but just the synthesis of appropriate order.

Thus mechanism and vitalism, cause and life, necessity and purpose must unite in the order of a higher synthesis. And this higher synthesis is just Individuality, of which we have seen Organism to be the distinctive type-fact, and for the understanding of which Organization is both the scientific and the logical category.

CHAPTER VI

THE NATURE OF CORPORATE INDIVIDUALITY AND THE GENERAL THEORY OF WILL

The individuality which the organism implicates as its proximate genus is the person as the unit of social life. But on a basis of the principles which we have just worked out its 'unity' or its being a unit is merely a statement of the question as to its place within the ordered whole of its 'others.' We saw that unity implies continuity. And this means that the inner law of stability for a given form is merely an instance of the same law as holding among such forms and as constituting the plurality of them into a unity of the same nature as any one 'unit.' Thus we found that the law of the constitution of the organism is merely a specialized formulation of the law of the continuity of organisms in the environment, that the organization of the organism is identical with the order of organisms in species. We have had already some hints as to the nature of that order, and of the structure and quality of the wholes to which it gives form. It is now necessary to make the nature and character of that order the object of special enquiry. For this purpose, and by way of making contact with our object immediate, it may be well to recall that constitutional order manifests itself in our experience through two types of phenomena. There are, in the first case, stable points of reference in our world which, as realized, become ends as the completion of purposes. These constitute the world as ordered. In the second case, there are the phenomena of growth, the becomings through which ends in nature and mind continuously reconstitute themselves in real-processes, and through which systems of ordered ends attain creative power. In the one case there is the real as objectified end; in the other the real as objectifying will. It is our obligation here, then, to make explicit the theory of will which has been implicit all along.

I. THE MIND OF THE GROUP

A great deal has been said on the question whether a group of persons acting together for an end which they purpose jointly to attain thereby creates a corporate entity peculiar to the group. The balance of opinion on the question seems to be that there is no mind of the group except in the sense of a collection of the individual minds, as sociology holds, or the duly constituted representatives of the whole as legal theory seems to imply. Further, many technically legal writers, and law is the field where the corporate personality becomes peculiarly important if real, assume that the question as commonly stated is unimportant, and that is to be the attitude adopted here; but for different reasons. The reasons given for refusing to take the question seriously by many legal writers is that what you have to deal with in practical affairs is a set of relations and acts and things as modified by acts, acts being assumed as the peculiar function of natural persons, and it makes no difference whether there is or is not a 'mind' in addition to these facts. In any case you have, from the current point of view, a system of functions which are performed rightly (legally) or wrongly or are rightfully or wrongfully neglected in the performance, and to assume a metaphysical entity behind these facts not only does not clarify but tends to confuse the situation. With all this we are in substantial agreement; it is to no purpose to construct entities where none exist, or where the implications of ultimate practice do not necessitate them. But different points of view may use the same words without necessarily referring to the same things, a fact which is responsible for most of the misunderstanding and perhaps for all of the progress of thought. It is therefore possible to speak of the unity of functions of groups without at the same time implying an external unifier, as seems to be done when a metaphysical mind of the group is denied existence. This is an example of the fallacy which we have insisted upon all along; the tendency to assume that a fact must have some particular thing behind it which explains it, and to which the fact can be referred if questions arise. And as questions usually do arise, the something behind the fact becomes, by mere long continuance of use, erected into a cause or an origin, simple reference to which comes habitually to

be taken as a final explanation of the fact. This is a case of the survival of magic in scientific method, and is extremely hard to deal with in many connections. The question therefore, about the nature and the existence of the mind of groups has nothing to do with metaphysical entities in this sense, nor with points of reference in causal explanations. In fact, a mind of the group conceived of as external to the group could not very satisfactorily be described, and it is doubtful whether it could to any advantage be argued about. So the external mind of the group or mind in the ordinarily causative sense can be dismissed without further discussion.

When, however, we undertake to describe the facts in the case of the acts and forbearances of groups representing various degrees of closeness of organization and differences in types of organization, the question must arise as to the difference of types of order in the groups which often correspond closely to the various qualities of acts. And if these relations can be shown to lie close to the constitution of mind, the questions of the 'minds' of systems is by no means trivial. For example, an act which has social or public consequences cannot be ignored because it is performed by a group in such a way that no person is individually responsible because there was no one individual mind concerned more than another. Could a gang of thieves be so organized as to have uniform modes of action which are recognized by all its members, whose acts would so follow from their group mind or unity in mode of action that individual responsibility would be lost? If the act involved what has traditionally been called crime, the courts would not rest until the crime had been fastened somewhere. Acts which are not criminal, but merely 'unsocial' or contrary to public policy, are vastly harder to connect with a specific personality. It is our antiquated theory of punishment that makes the trouble in such cases. If personal responsibility can thus be dodged, the way is open to show that all responsibility is 'social' and that conscience is merely civic or public feeling, which would agree with the 'facts' of sociology. That a conscience is or may be inheritable, as the 'New England conscience,' or due to mass contacts, as a "business man's conscience," suggests that what we are dealing with here are products of social forces. Questions as to the unity, permanence, responsibility, obligation, suability, punishability, etc., of

the group cannot be avoided, and every one of these terms refers ultimately to mind. The way out suggested most readily is that the mind concerned is that of the constituent individuals, but then the question as to just which individuals are concerned as constituents often shows great practical difficulties. That is, the universal type of explanation, the reference to a given unit or atom as the magical key to all situations, is the first resort. And the results of this method as applied to the legal interpretation of the acts of industrial corporations in American courts and legislatures show conclusively that the old idea of individual responsibility is of limited applicability in modern conditions.

The practical problems which arise out of group action compel a consideration of the characters of the group, and the characters which are thus forced upon attention are such as refer to the kinds of organization which different groups represent. Thus the question as to whether an organization of laborers is a 'corporation' such as to become the point of incidence for legal relations is a question as to how the group is organized, and this question requires the determination of the motives, purposes, methods, ends, etc., from the actions of the group in its relations to individuals and other organizations both within and outside the group. But it also requires the analysis of relations that can be given no characteristic meaning as applied to individuals taken singly, and these relations must be referred to the group, or since the group does not seem to justify itself as a social concept, to some other substantial aspect of the relational whole which maintains itself as the form of the social life. In fact, the organization of the group is recognized as necessary in order to perform functions which in the nature of the case cannot be performed by the individual, consequently the reference of these functions to individuals generally tends to confuse the situation. That our legal and legislative machinery has developed no workable technique for the determination of inter-group relations is no proof that such relations are of no importance as fact, but merely indicates that law and legislation are out of touch with the new types of social institution that are continually being created. The reference to the individual of all social or interpersonal relations therefore neglects the fact that natural individuals are themselves ordered eccentrically about the content

of fact which, as objective, constitutes the institutions of life, and is once more a case of the fallacy of inwardness and subjectivity. The fact that the individual himself is a unity of fact and does not differ in principle from the organization of a group of persons makes questions as to the nature of order and organization within human affairs of vastly more importance than abstract questions about personality. And these objective situations as organizations of fact in their growth through environmental conditions conflict with each other and develop relations which have in some cases no direct reference whatever to individual persons but yet give rise to many sorts of juridical phenomena and to moral problems of many kinds. The function of law, therefore, as the instrument of control in the affairs of men, breaks down utterly when it operates upon 'subjects of rights and duties' considered as isolated individuals, and in its collapse has nothing left to do but to lament the disrespect for law which emanates from the bad metaphysical essence of the person. It is significant that the sociological concept of group has not been taken seriously in legal questions, since the conception of group is shown up in its essential irrationality the moment it is brought into contact with the idea of law.

The fact then is the existence of systems of relations which must be considered as what they are, and speculation upon the nature of the abstract points between which these relations hold is nonsense unless it is found necessary in descriptive interpretation of these relations considered as objective and impersonal, if 'personal' must refer to self-contained mutually exclusive units. But as will be shown later and is already implied, this exclusive unit is precisely what is not a person. Now, the descriptive interpretation of these relations consists in tracing the mutual interlacing of the relations, showing their dependence upon each other and their capacity to reach ends through the involvement of each other as instruments. Then the tendency for such relations to knit themselves together around an end (not an origin or a cause as beginning) which expresses the meaning of each, forms them into a whole the parts of which are dynamic references to a common meaning. In other words, the fact is that such relations are formed objectively, mutually determined toward an end that holds them together and which is at the same time itself constituted

of the same objective and impersonal content. The group of relations then may be called a system of active or dynamic references to an object which systematizes them. This is the element of self-reference (self-completeness, independence) in individuality, and, taken literally and by itself, is responsible for the conception of the individual as unique. But the real essence of individuality is not, as we have already seen, what particularizes it in isolation, but what accommodates it to its universal in the system of real characters which constitutes the species. Then the coexistence of uniqueness with specific commonalty as universal gives the individual as at once type and fact-particular. As a unity of relations it is then an order, and since the relations are objective and in the negative sense impersonal, there is no meaning or sense in referring them either to 'individuals' or to 'society' except as these are considered as the ended order or the unity of the relations themselves. The whole muddle about individual or social can thus be avoided, and with it much of the fabric of social theory, the fundamental question of which, viz., how to build up the social out of individuals, becomes an illusion. Our problem calls then for as nearly complete objectivity as the nature of language will permit.

II. ORDER OF RELATED FACT AS MIND

But a system of fact ordered with reference to an end which is qualitatively specified or universalized in the characters of the facts involved, that is, is referred to type, is a mind. And it is found that this description fits, somewhat loosely, perhaps, the social "group." The social group, therefore, qualitatively specified or referred to its species in its own way, refers to the same order or type with mind in its individual form, and is consequently itself a mind. It is curious that traditional theory has argued that a mind is unique, and then generalized to the result that all minds are alike even while they have a constitution which as such effectually differentiates them from everything else. What has been meant perhaps is that mind is a type and that this type can be described through its peculiar characters and thus isolated from everything that does not possess just these characters (qualities and relations with specific order). But this truth is consistent with the further

fact that within the type differences may extend through degrees to infinity, giving a larger variety of varieties of *minded forms*. Some of the more important of these varieties of mind have been instanced in the socialized, the individualized, and the institutionalized minds, and it is now our purpose to describe the corporate mind as the perfect or typical form, as in its higher aspects *the institutionalized mind moralized*. It will be found then, in appropriate degree, as an element in all forms of mind. Then a group of relations ordered eccentrically in respect of objective content and with reference to an end recognized as principle within content so ordered, is a mind, and there are as many varieties of minds or forms of individuality as there are qualitatively specifiable kinds of such groups. It is this order of content which embodies the mind or clothes it with corporeity. It may then be called the corporate mind.

Since the corporate mind as distinguished from the primitive mass- or group-mind is historically the highest type of mind developed, and since the basis of a mind in fact is the precipitate of its history in its practical reference to its principle recognized as immediate, the corporate mind is the cumulative whole of mind or is mind considered as principle. In it, therefore, are all the facts, and its nature consists precisely in its being the order of all the facts. Yet corporate mind, as will, must be carefully distinguished from the 'collective' mind. And this point must be kept in mind throughout all the discussion in order that the essence of mind be not identified with a part of its content. The special reference of fact to the part, which we have described as subjective and organic, has created individualism and has brought human life near extinction, just as the same partial reference has made a tissue of illusion of social theory. The only consistent social theory is the theory of orders of persons "natural and civil," as Hobbes would say. And the corporate or civil is the full form of individuality because it embraces referentially all the fact and at the same time is characterized by all the typic or generic forms of order. In its modern instances it is the original Greek Idea recovering from the subjectivity and inwardness which were imposed on it by the mongrel formlessness of the Orient, and maintained there as the "spirit" of Christianity. What has given it its peculiar tenacity throughout history is its principle

of the rationality of fact as fact may be expressed through scientific description and esthetic interpretation. In these cases there is the corporate idea of form attempting to give order to a system of purely physically determined fact, the attempt to get order finally in the lowest range of fact, the type of fact which represents abstract existence. If it is accomplished the world of human relations will be rationalized, the last element of irrationality as abstracted existence will be expelled, and the new type of order which will be created will be the one developed in the process of the breeding out of existence of the exclusive type of mind.

The point where the corporate form of mind is becoming most seriously a conscious question is in law, and this is hopeful at least in the fact that since law presumably deals with principles, the question of corporate relationships will be settled rightly according to principle, if human effort is successful. But such a result implies that the law itself is up for a good deal of reorganization. Discussions of law seem significant in that they are rather thorough-going analyses of the ordinary relations of fact as those relations constitute political, moral, and social problems. From the traditional mode of approach to such problems one would infer that the most direct method of description begins with a discussion of will. And the two types of theoretical interpretation with respect to the will assume first, that all executive functions in human life originate in the metaphysical will of the natural person and get final expression through the institutions of social life in the form of a perfected individual will; that is, that the end of all human action is the abstract subjective perfection of the will of the natural person; secondly, that executive functions originate in an equally metaphysical general will and issue through expression in natural persons in a perfected state or an ultimate harmony of the 'natural wills' with each other in the state. Each of the types of thought represents truth in a very large and important way, and their agreement with fact in the larger area of their practical meaning makes them difficult of criticism. There is therefore little respect or attention to be given to a discussion which disposes of both with a dramatic gesture toward the facts, or to the discussion which accepts uncritically either without reference at every point to the facts which suggest the other. It is not the inten-

tion at this point to enter into a discussion of the detail of the theory of will. But a critical reference of both types of attitude to the question mentioned above may give a basis for a statement of the larger outlines of the theory with respect to its practical meaning as worked out in the form of principle or law.

III. THE FACTUAL ASPECTS OF WILL

Beginning with the first type of attitude, that all executive human functions originate in the will of the natural person, it may be pointed out that some difficulties have already been either formulated or indicated in what we have said in connection with other questions. A reference to very generally accepted doctrines of psychology with respect to will raises some difficulties at once. Psychology seems to find no evidence of the existence of such a will as seems to be presupposed. Expressions or actions of will seem not distinguishable from actions of several other 'faculties' of mind, and if we could assume the existence of will as a faculty which is responsible alone for definitely assignable functions, the result would be the breaking up of the mind into a 'society' of separate agencies, and the 'social' question would be merely transferred inside the mind as a question of the relations of those agencies to each other and to the whole. Then the attempt to simplify merely leads to a repetition of 'entities' and to a reduplication of the problem on a smaller scale. But psychology frankly cuts through all these difficulties by simply referring to the will as a typic quality belonging to perhaps all kinds of mental action. Analysis of the facts of mind reveals in each a restitutive or reproductive tendency, a tendency to reproduce itself or expand outwardly and institute itself in the form of the objective permanence of an act or *fait accompli*. Any fact of mind thus tends to restore the harmony of its inner being with its external conditions, and to maintain itself as expressed in a permanent reference to the whole mind within the outer order in which it occurs. This resiliency perhaps is characteristic of all mental facts, and may be described in terms which we have adopted in other connections as the growth tendency of mental facts. And this implies of course a basis of operation in a historically ordered past together with the urgency toward the future represented in the immediate fitness of

mental facts for order. Will is then merely the propulsive tendency to order in fact, or the fact that fact can exist only as ordered, and it is a character of perhaps all facts whether regarded as 'mental' or not. In any case the psychological doctrine of will allows no special dignity to any specific kind of mental function, so that the will of the 'natural person' not only does not exist in the sense assumed, but the natural person itself loses the dignity arising from the unique position as seat of will accorded to it in most social or practical theory. The natural person then as will becomes merely a degree form within the series of entities possessing wills as individualities. That means that from the point of view of will there is nothing unique about the natural person, or at least that this uniqueness is not the core of his meaning as an individual. Or, uniqueness merely refers to the particular degree of individuality which the natural person possesses. Psychology is thus rather hard on the theory of the individual will. And from a psychological point of view also the notion of the will as originator of action is shown to be another case of the magic involved in requiring a point of origin as the explanation of fact. All questions of ultimate origin are ultimately unintelligible; and this, once accepted as a principle, will save much difficulty in questions of fact and much embarrassment in questions of logic.

But not only does the assumed will of the natural person involve difficulties in the psychological aspects of the mental situation. Assuming that we have disposed of the mental aspect of the natural will, there remains the natural person considered as organism and as the originator of acts and relations. But our discussion of the organism has shown that in so far as it is a mechanism whose law is causation it is shut out in advance from the possession of a faculty of will in any sense in which the term is used in social theory. The propulsion of the organism as such is force, not will. We saw that the organism as controlled by cause is limited in its 'action' to a mere repetitive reproduction or maintenance of itself *in statu quo*. Its 'acts' are not expansions outwardly of a purpose into a change in objective content, but recur incessantly within the circle of their subjective status. The self which it reproduces is a replica of itself, a content poured into itself as a mould which predetermines every detail of the 'new' form

which appears. Aristotle was therefore right in denying the possibility of the transmutation of one species into another, so long as species determinants are restricted to physical and organic features. The organism therefore goes on forever merely maintaining itself within the limits of the system of fact which it everlastingly is; it can never as mere organism become anything else. It therefore cannot act in any real sense of the word; it moves, reacts, or re-enacts itself eternally. Then the organism as will involves a whole system of contradictions; there seems to be by no strain of metaphor any spontaneity to be got out of presupposed mechanism. But the consistency in a certain sense of spontaneity with mechanism will be worked out in another place, where the two concepts will be given content in merely differences of types of fact.

If, however, what is said here seems to deny the possibility of evolution of the organism, it should call for a word of explanation on that head. When I say that the organism cannot become anything else, I seem to deny that a given form of organism ever evolves into another form. I do not even know whether such an evolution is possible or not. What seems certain is that, even if a change is effected from one form of organism into another, the relation between the organism at all points in the transmutation and the species which is the principle of order in the facts that constitute the organism, will remain constant. And this is nothing more than saying that the facts in any situation have a logical or ground relation to their order, and that this ground relation will remain constant as the principle of the order even in the presence of whatever changes in the facts or in the particular form of the order. That is, if the form of fact changes in growth toward the typical organization, the species also as order will tend to approach the form of fact. That is, on the evolutionary theory, it is the species, and not the organism, which changes, while the order as whole remains as constant logical ground. The only meaning therefore that can be given evolutionary changes is one which is derived not from the fact content of the process, not from organisms as mechanical systems, but from the ideal order which unifies organisms into super-organic systems. Real change thus implies something more than things changed, it implies the *idea* of change, i. e., the species, as prior. That

the form should vary with the content is the meaning of evolution; but behind evolution is the permanency of the character of order in the absence of which evolution itself would be meaningless. And this is the reason why evolution as a theory of a causally determined order is not established as yet; and both causation and evolution will become less inconsistent with fact and less internally or logically self-contradictory when it is recognized that such a theory of evolution never can be formed or proved. Causational evolution is process, and process 'gets nowhere.' And while it is a type of constant logical relation which gives permanence of form to human life that we are in search of in practical interests, the reference to the organism, while suggestive in a thousand ways, is not the principle which we seek. Organic theories of society, then, remain largely pleasing metaphor.

The organism cannot therefore be universalized as will. The reference to the natural person as the seat of will and as thus the principle of explanation for human inter-relationships seems to be faulty in spite of the fact that it is responsible for the very complexity of those relations themselves, and for the vast mechanisms of social machinery in institutions which have been created to give form to those relations. The individualistic theory of the natural person is responsible for the peculiar form of present culture, and it would be foolish to deny its potency or the significance of the culture which it has produced. But it is also responsible for a large part of the weakness of that culture and when intelligence asks for suggestions as to how to expedite the evolution of present culture forms into their next immediate stage, individualism is dumb. Besides, as mere matters of fact, tendencies to types of order which individualism cannot even understand are now apparently becoming the chief factors in social organizations, e. g., the tendency to 'group' action in corporations. Or, even if no tolerance is accorded the idea of reform, the same thing can be stated by saying that individualism has allowed the culture which it represents to lapse behind the movement of the very will whose spontaneity it has presupposed. The perfection of the will of the natural person shows no promise of being achieved, the very end which individualism hopes to accomplish. A consistent doctrine of will seems not to be possible

on the assumption of the unique individuality of the natural person, just as it is not possible on the assumption of the unique mind.

To return to the second point mentioned above, viz., that executive or propulsive functions in life originate in a general will which expresses itself through natural persons in the unity of the state considered as the instrument and as the harmony of natural wills. This view is recognized at the outset as true in its main outlines; and it is only the distorted conception of will in its character of universality together with its mistaken application in particular aspects that will call for criticism in this connection. It will appear that the two types of theory, i. e., that of the private will and that of the general will, represent essentially the same motive, and are different only because of the different angle from which they look at the facts of will and action, with resulting differences of emphasis. Both imply, in the last analysis, origins, causes, distinct entities. The main criticisms of the doctrines of general will have become classic and will not require to be reproduced here. Against all of them I shall suggest that the mere fact of social movement in what is called culture toward ends which may not even be clearly prevised by the whole or by any individuals is sufficient answer. And this accomplishment of ends does not imply anything with respect to progress. That is, the theory of the general will in some sense is true to the facts, and the question is not whether there exists a general will but what does the idea of a general will mean. If the doctrine means, as it seems to mean in much of the literature on the question, to assume the actuality of a power specialized among the powers of a social or 'general' mind, then there is little hope of support for it from reference to the facts. The good and sufficient answer to a supposition of that kind is the empirical 'I desire it may be produced' of Hume, even if we extend Hume's demand to include a proof based on logical implication and inference. For, if a conception is taken to represent an actuality determined within space-time limits, then the evidence of sense perception is final. And as this is the form of the conception for many of the critics of the general will there is no answer to them except that they should improve their minds. If then in the case of the general will it is required to find a concrete or specific fact which of itself guarantees it,

such a will cannot be proved. Nor can any specific causal agency be found for the facts upon which the idea of a general will is based. Fact which is experientially verifiable does not require to be explained through causes, which expresses the truth in the empiricist's demand to be 'shown.'

The question of the general will is then a question of the interpretation of fact, and the theories of a general will which assert and deny rest upon differences in and deductions from fact, the existence and nature of the fact being such as could not be seriously questioned by anyone. That there does develop within any group of persons which may come into association in any way, however accidental or 'causal,' a propulsive tendency towards ends which become ends for the separate individuals only because the individuals assume the relations to each other that they as a matter of fact do assume, is beyond question.¹ And this propulsive tendency is what is meant by a general will. It is the same fact which in a similar way represents the relations of fact within the life of any given natural individual, and there are as good reasons for specifying the fact by a designation of its own in the one case as in the other. That is, the existence of will in the individual is dependent upon the organization of fact which we call the individual's experience, or history, or heredity, etc., and the particular nature of any element of that fact is indifferent so long as that nature is such as to permit of relation. And this is saying merely that the elements of fact and the order of fact shall be real, since the possibility of relationship in a given fact is dependent in part upon the nature of the fact to which it is related. Then the mere physical tendencies of the organism become elements of will in their having relations through purposes to ends, just as social institutions are matters of will in their having similar relations. The will of the individual is thus a 'general' will, in the sense that it is a capacity which corresponds to an organization of fact within the individual, which organization of fact is continuous with the organization of fact outside the individual. And the difference between the individual will and the general will is then a difference in the degree of individuality involved; one is specified, i. e., referred to its kind or species, by one group of ordered objective con-

¹ Dicey, *Lectures on the Relation between Law and Public Opinion in England During the Nineteenth Century*. London, 1920, p. 154.

tent, and the other by another group of ordered objective content. Further, the content of the individual will will be continuous with and organic to the content of the general will where the individual will is 'right.' That is, the moral quality of a will, as well as its effectiveness, or power to get itself expressed, depends upon its purposive continuity with a larger will which includes it as part of its content. The organization of a will then may be identical with that of a more inclusive will while yet the lesser will remains 'free'; in fact what is meant by freedom is the positive and constructive urge which an individual will gives to the propulsiveness of the general will by the assent of the former to the larger purposes defined by the latter. This freedom in its particularized form in any given context is of course conditioned upon a variety of elements which make up a will, the most important of which is the element involving knowledge and intelligence.

It is entirely beside the point to raise the question of causes here, or the question of points of origin. Where or how or what particular thing or event may be the point out of which an act of will seems to issue, the mere seeming origin has no meaning so far as the quality of will is concerned. At best such a question could merely raise discussion as to the types of fact on occasion of the appearance of which given sorts of will-action tend to follow, and that sort of empiricism identifies will with accident rather than with purpose. Scientific analysis and classification of fact has little to do with will. And yet there might from some conceivable point of view be an interest of a scientific sort developed from tabulating various sorts of will actions in connection with the variety of fact which enters into the constitution of will. This, I think, is the utmost possible consequence or value that can come from a discussion of 'motives'; what particular psychological fact happened immediately to precede a given act is the most inconsequential bit of knowledge imaginable. It might possibly be of some casuistical value in the control of his actions by the individual, but it is of the nature of will as free to be able to effect a purpose through any fact which happens to be convenient. Even the organism as a whole of fact can restore one of its parts, provided the part is not itself organized as an independent individual, the part thus becoming the particular instrument for the action of the 'will' of the whole. And in

any thoroughgoing theory of division of labor such parts must be regarded as more or less complete wholes. In any case the reference of an act to a specific motive is a first rate example of the fallacy of *post hoc*. If, however, the study of motives should be able to give any insight into the organization of fact which is will, it would be of consequence not only for the control of individual but also of social 'forces.'

IV. WILL AS THE TREND OF INSTITUTIONS

This I should suggest as the proper subject matter of sociology. But what is to be remembered is that not private and particular aspects of the psychological individual, but the objective and general aspects of the individual as an objective order is the fact to be investigated. And this fact is to be approached not from the point of view of the entities or metaphysical centers between which relations hold as abstractions, but from the view that these relations taken as the order of the complex of fact are the matters of importance in that it is they that give to the situation its substantiality. Attention centered upon either individuals or groups as such represents the subjectivism which enters the blind alley with the homogeneous unit, and it makes no difference whether this unit is psychological or biological in its ultimate stuff. The facts for the practical sciences are the situations of related things which represent not only the will as a creative force, but the will as 'willed' in an objectified purpose. It is the fact that the orders into which facts do get related have two essential aspects; in the one case, will tends to the ordering of things permanently in institutions; or, institutions are the permanent tendencies of fact systems to significant order; and in the other, institutions tend through the very fact of their organization to develop propulsive or driving power which expresses itself as will. And these are for 'social' sciences the ultimate facts. Once get rid of individualism, which as science is atomism, by transforming the individual into the individuality through the recognition of its degree forms, and we have not only the key to the knowledge of the facts of life, but also the tool through which the control of those facts toward ends of worth is to be accomplished.

With these considerations in mind, the question of the "will

of the whole" and of the "will of all" do not require to be discussed. They have little meaning after our conception of will as order in corporate forms is once established.

Will then is the generalized dynamic aspect of the characteristic orders of fact of human life. It is the fact that orders of facts develop or have by nature effective purposes, or propulsive tendencies toward the permanence of their own form of order and toward the expansion into reproduction of new instances of similar orders. Will is then not the Schopenhauerian blind and stubborn effort to maintain and perpetuate a given *status quo* of reality, not the mere "self-preservative instinct," but the impulse to realize ends through reproduction in the Platonic sense. It is the law of ordered growth in the life unit, the dynamic integrity of a real whole. It is the essence of Individuality. It is not a mythical creative energy behind fact, nor an ultimate simple essence to be discovered in fact; but simply the fact as it presents itself in its fluent and growth aspects. The typical orders of fact which we call will are the characteristic embodiments of persons, things, acts, purposes, which make up the institutions of life, those forms in which life has set itself up. And typical of these is the form which goes under the name of corporation.

It will be noticed that in arriving at this conception of the corporation as embodied will and as the typical order-form of life such questions as the existence of mind or the relation of mind to organism are ignored, or if mentioned at all, are mentioned to show their artificiality for practical purposes. The relation of mind to organism is merely a special case of the relation of mind to object. Then a proper discussion of the nature of corporation can neglect altogether any serious reference to 'mind' or 'will' in the ordinary subjective sense, and will thus be the freer to devote its energies to the systems of things and relations which make up at the same time the content and context of life and the medium of action. The division of these facts and things for practical purposes into the classes of persons, things, and acts, such as the jurist usually resorts to is as convenient a mode of approach as any. The corporation as a person then or the personality of the corporation from the point of view of structure will be merely a question of its organization as viewed from the inside in terms of the interrelations of its constituent parts and without

direct reference to its external relationships. It is a question of the self-sufficiency of the individuality. It is by this method that Aristotle and Plato develop the theory of the city-state, and it was the consistency with which they maintained the point of view that accounts for the universal truth of their results, and their failure to see the place of the state within the larger personality of humanity (if, as a matter of fact, they did fail) was responsible for the limitations of their results. It at least gave them both a deal of trouble on the questions of war and slavery. The question of personality, then, is a question of fact, and the important fact has reference to the type of order involved. Whether a corporation is a personality is a question of whether, within the given system of social relations, a given set of things and relations with a given internal organization of functions and of objective content exists. And the further practical question whether the corporation is legal or illegal, moral or immoral, punishable, responsible, etc., is one with reference to whether and how far the set of things and relations which exists is consistent and harmonizable with the total set of things and relations of the same sort which we hold as representing our highest end. It is a question of the "law and the evidence," i. e., of the facts and their immanent principle. The closer we keep to the original fact which makes up the content of such questions the nearer we shall come not only to the desirable practical results but also to the final consistencies of correct or true knowledge in theory. Let us look at corporation as person, as act, and as thing; as thought, as will, and as end; and try to retain so far as possible a hold on the immediate facts.

The corporation as person we have said is a question of its inner constitution, of how its mind as intended end is 'made up.' It is a question as to the forms and methods of organization, a question of how certain desultory states of fact are organized into a unity of purpose toward a definite end. This is after all the question as to the principle which holds a state of fact to given form and thus determines a species or the principle which determines a "state of fact as productive of legal consequences." If the species is a living species, that is, a higher form of individuality, the principle will be dynamic in that the state of fact will show distinguishable stages, or will be represented as a growth. It is in this class of indi-

viduality that groups of persons as describable states of fact fall, so their principle is dynamic and will be represented in its various stages of operation by different names. A little reflection will show, after consideration of our analysis of types of mind, as it was the purpose of this analysis to show the personality in its historic growth forms, that there have been four stages¹ in the growth of the principle of personality. These are represented by (1) The principle as fortune, chance, hazard, nature, (2) Will, or human nature, (3) Reason, (4) Plupurpose. These call for brief explanation, and can be understood in the sense intended only by keeping in mind the various steps in the argument of previous chapters. The attempt has been made to refer to the simplest states of fact which anybody might verify who cares to take the trouble.

V. THE DEVELOPMENT OF CORPORATE WILL

(1) Nature. In this discussion of nature it seems necessary at once to recognize the element of disorder which characterizes nature throughout. Or, for those who insist upon consistency at all cost, we may refer to those states of fact in which no significant degree of order has been attained. This circumstance we may call accident or chance, without perhaps raising the difficult problems of logic involved. It may, however, seem unjustifiable to refer to accident or hazard or fortune as principle, since the accidental is supposed to represent the exact opposite of principle. But the term refers to a state of fact which in essential nature does not differ from the most 'principled' of fact. By the reference to accident or nature as involving the Greek element of chance or fate, or fortune, I mean to refer to the fact that human beings are thrown together and caused to take some form as a body by the sheer force of external circumstances. This does not, however, imply cause, since the relation involved does not rest upon the regularity of repeatable events. It seems necessary that nature, as situations of natural or physical fact

¹ Representing these facts as stages is of course, merely using the category of time to divide for convenience a continuum into its outstanding moments. It would be equally legitimate, and for some purposes more useful, to regard the "stages" as compresent and parallel factors in a growth process. The presence of all the stages in the final stage shows the progress to be a growth as involving ends.

with some degree of order, be presupposed. These circumstances may be such as are not recognized at all by the persons whom they affect, or, if recognized, such as can be controlled by no means they can devise. It is as if a purely physical force were operating upon a plastic bit of matter, and moulding it into forms configured by the intensity, angle of incidence, etc., of the force limited by the nature and degree of plasticity of the matter. It is the incalculable element of capacity for changes which can not be anticipated which gives the plasticity of matter positive or constructive power. That is, it is the operation of 'nature' upon the 'primitive man,' both nature and the primitive man being considered as nearly purely mechanical agencies as can be conceived. It is, of course, recognized that no such condition ever prevailed in human life; but it is also recognized as true that the element of pure incalculable physical force in the form of geographical conditions, etc., and as unmodified by will is of considerable importance in all stages of human development, and it is this factor which we wish to understand. Thus a given section of a rural community will be divided into two neighborhoods by the mere fact that they are separated by a creek which offers only slight difficulties of crossing. I am not referring here to the fact that the people 'across the creek' will sooner or later assume 'foreign' characters which may develop by stimulation through 'tradition' into 'hostile' forms. This latter development is perhaps due to the second principle mentioned above. But what is in mind is that the lines of fission between institutional forms may be drawn by objects that are accidental in the sense that under differing contextual circumstances they may have the exact opposite effect. They get their potency from their mere position. So that a mountain barrier which forms the line between two corporate groups upon which all sorts of social and traditional differences may be based, may also become, as the common refuge of the two tribes in time of common danger, just the condition of the consolidation of the two tribes into one through the mutual absorption of cultures. But what seems incontrovertible is that in the animal aspects of human life at least there are physical forces at work which from the point of view of will or purpose are purely accidental. And since human life in its corporate form is a growth and as such a cumulative result, the same element of

pure accident remains in its highest forms. Since therefore it is universal and is permanent in the constitution of fact it is a principle. Or, if the term "accident" be regarded as misleading, what we mean is that given a plurality of human beings with their inherent tendency to order, what specific type of organization they will take on, i. e., their form of will, will depend upon the mere chance constellation of extra-human fact which happens to be present.

(2) Human Nature. By the principle of will or human nature I mean to refer to those effects upon the form of human institutions which are due to the specific characters of man, those elements which constitute human nature as a department within nature. The organization of human nature operates as a productive force, and may be regarded as corporate will. Thus Socrates, stating the matter subjectively, shows that we must have shoemakers because 'desire' has led us to wear shoes, and we must have some sort of producing institution corresponding to each department of our wants. The order of society or the state is just the growth-unity of these institutions, as the destruction of the state is the dissolution of institutions, by the hyperdevelopment of these 'indispensables,' as Aristotle calls them. So Socrates says we must have all sorts of business men if we are constructing a city of pigs, and the principle we adopt in the pig city, as the mere greed for indefinite increase of material things, will lead the state to surpass its own natural boundaries and thus make war necessary. Thus the unnatural comes as a perversion of the natural, and implies a lapse of human interest in proper ends in the ignorance which makes evil, just as the centering of purposes about natural ends, or the 'remembrance' of the idea, is the wisdom which is perfected in the good. It is in connection with these processes of interaction between nature and human traits that the Greek thinkers constructed the sciences of ethics and politics on a basis of the economy which corresponds to a life according to nature. And this is the meaning of Aristotle's famous dictum that the state is natural. As such, the state as the order of natural institutions, is 'involuntary' in that it comes not from motives clearly formulated either by persons or by groups, but as the natural or inevitable overt form which original impulse gives it under the limiting

influences exerted by the accidents of geography, climate, etc. The state's "corporate capacity" then is will.

Voluntary attention or will as intelligent comes into force only in the delimiting and definition of the primary ideas of the good, etc., as general types of these limiting conditions considered as objective means, while the specific institutions take their forms as the objectification of more or less reflex tendencies. That is, the institutions of life come as the natural or unintended ends of the activities of the 'socialized mind,' which gives them the fatalistic inevitableness with which the Greeks tended to invest them, and which made the conception of reform foreign to the Greek mind. For Plato, at least, the question is never how to reconstruct institutions, but always how to understand or constitute them, how to come to a full realization of them as the normal effects of ends objectified 'with respect to the Ideas.' This is the reason for the emphasis on the necessity of knowledge, or the necessity of an understanding of human nature, the 'know thyself' which in a later period got perverted into the subjective injunction to 'know one's own heart,' and into the individualism of a still later period. Thus the naturalness of the state, under the influence of the particularizing influence of the idea of fate, which later became the conception of cause, together with its interpretation in knowledge terms and the resulting inwardness of subjectivism, developed the doctrine of the naturalness of the state into the perverted doctrines of a 'state of nature' and of 'natural rights.' Thus the original Greek notion of the state as simply the fitness together of the institutions which human nature makes necessary, and the same notion as universalized by the Romans in the conception that such institutions are "divine," i. e., simply states of fact that are independent of the limitations of tribal or racial tradition and prejudice as well as of geographical and other accidental features, became 'socialized' and mechanized by the influences which history loaded upon them in the reception of Christianity and the invasion of the barbarians from the north.

Institutions then, when the emphasis singles out their features as natural and involuntary and inevitable, are the characteristic expression of the socialized mind. And while this fact is responsible for many if not most of the strong features and

perhaps of all the satisfying qualities of existing institutions, yet the stimulus which the Greeks gave to the knowledge impulse and the idealizing or principle-forming tendency, together with the yearning of feeling which was created in the unfortunate condition of world affairs succeeding the dissolution of the Greek and Roman states, created and kept alive a conception, or rather a sort of eschatological hope, of a state which would be founded in something more abiding than the frailties of nature. This is the idea of a state as effectuated by will or conscious purpose, 'founded in the heavens,' which, as not only natural but also rational (since unfortunately the conceptions of nature and reason had been separated and opposed to each other in the Christian scheme), would so identify fact with principle that it would abide as the permanent harmony of all ends divine as well as human. The idea of an ideal state as it has persisted from Plato to H. G. Wells has been among the most significant of regulating principles in human thought; the idea that by taking thought man could avoid all the dangers and attain all the successes that are possible in the nature of things. But the deferred incorporation or embodiment of this idea, or its postponement as a hope, which in religion became confused with the real and thus defined as reality in non-corporate forms, has been the main obstacle to the full realization of national states into their appropriate embodiment in a corporate world-order. It is thus that existing fact and ideal hope combine to establish the concept of a corporate whole of life.

VI. THE INSTITUTIONAL WILL AND THE PERSON

(3) Reason. Accordingly the idea of the state becomes a fully conscious motive. And, since the state as incorporate human nature is to be the end and fulfillment of all human purposes in institutional forms, and since these forms must correspond individually to the inner purposes, the problem which has now become conscious takes on two forms. (a) In the first place there is the beginning of the study of institutions themselves which finally issued in theory of the state and jurisprudence. In other words the objective or outer aspects of the state as a system of accomplished ordered values becomes more or less clearly formulated as a problem. (b) In

the second place, the internal aspects of the state, or the nature upon which the state rests, becomes the problem of the analysis of human nature, attempts at solution of which resulted in the modern systems of epistemology and psychology. And the historical states of fact which resulted from attempts at solution of these problems were, in the first case, the modern national states, and in the second the institution of the individual natural person. The tendency is therefore in both cases one toward particularization; the State as ideal or as the order of law particularizes into individual nations, and humanity into individual men. We have therefore in the one case the more or less voluntary and conscious organization of groups into corporate wholes representing more or less clearly defined purposes; and the made-to-order constitutions which came to be characteristic of the movement when fully matured. These constitutions were deliberate attempts to see the state as a whole, and to adapt its institutional machinery to an accepted theory of human nature. The French and the American constitutions are the typical instances. But the best instance of the motive which was at work as the second tendency just noted, is the formation of various lesser groups for more or less distinct and deliberate purposes such as the guilds and 'societies with a purpose' which grew up within the newly developing industrial life and in the church. As modern instances may be cited the vast variety of organizations which grow up within separate institutions, as the organizations of business men into chambers of commerce, credit associations, protective associations, and of laboring men into trade unions, insurance associations, etc. The extent to which this tendency to corporation under the will to organize has gone is noticeable in the names of such groups as the "Society for the Prevention of Cruelty to Animals," in which the purpose or end is definitely organized in the name as a constant reminder that the purpose must be conscious. The tendency goes so far as to assume a ridiculous aspect in the formation of societies which merely distinguish their members by the fact that there are persons outside, distinctions which rest upon no imaginable differences, as is evidenced by the attempt of a college sorority to demonstrate that its members represent a 'type.' And there are such malformations as have been recently growing up around purposes of "moral uplift," and which thrive on the

morbid interest in other people's infirmities, yet conceive themselves to be embodiments of 'ideas.' But even these forms indicate that an objective end may be accomplished by action rendered common by conscious effort through corporate agencies as the instruments of reason.

We thus have the principle of intelligence under the influence of the will urge carried to the extreme of supposing that every thing in life can be prepared for in advance and can be born full grown out of the imagination. Its effect on the state is shown clearly in the legal history of the United States, where the problem of adapting the constitution to changing conditions has led to many ludicrous and some tragic results. The idea of the founders seems to have been that a constitution fully blown could by discussion be evolved out of the theories of individuality which are implicit in the doctrines of natural rights, freedom of contract, etc. Or, if not the idea of the founders, as some of the *Federalist Papers* seem to indicate that the founders, or some of them, did not expect a ready-made constitution to stay put, the effect of the socialization tendency soon threw over the constitution the veil of sacredness which guarantees the rightness of what is, and the constitution which was fitted to a set of life conditions which had perhaps at the time of its adoption already tended to disappear, becomes a rigid rule which, because it was not adaptable, had to be broken and then mended, as in the case of the Civil War which was followed by "amendments." There followed also from this extreme rationalism and the fixed character of the constitution which it necessitated, the vexatious but unreal and unnecessary problem of constitutional interpretation; or rather, the problem of interpretation, which would arise in any case from the changing content of experience which is its natural subject-matter, was made irrational by the assumption that an idea once put into words is irrevocably fixed and unchanging, and all future thought must conform to it. Corporate order once established, it seems to have been assumed, precluded any possibility of further growth. The meaning of the constitution was then 'clear,' but it was also clear that most new obligations imposed upon citizens by changing conditions were contrary to the constitution because such obligations had not been anticipated in the wording of the 'instrument' to be interpreted. Such are the effects of

the attempt to foresee all exigencies in advance. The purely rational state demonstrates itself as unnatural. The idea that by the application of intelligence and reason a constitution could be imposed upon a people made the serious mistake of neglecting the fact that *a people always has a constitution*, a corporate organization by nature, one determined by the necessities of the institutions through which the people attains its purposes. Constitutional law then is declaratory of the conditions of order that exist, and not the interpretation of a theory of a purely rational order. In fact the constitution which actually governs or is the instrument or method of government in any actual state is nothing less than the system of institutions which define and attempt to materialize or mature the public ends of the people considered as a nation. And since these ends cannot be fully known in advance, the machinery proper to their attainment cannot be designed in advance. Both the ends and the machinery for their attainment must be left to the good sense of men and the process of experimentation which works out means as the status of the problem requires. And the alternative to experimentation in government and politics is the policy of doing what is known to be wrong and then getting later such consent from citizens as can be attained by force and deception, which seem to be the only instruments which governments at present know how to use. It is tragic when governmental representatives recognize a given or proposed policy as 'abstractly right' but refuse to attempt to carry it out because it is supposed inexpedient. Which means that they do not find its abstract pattern provided ready-made in the "constitution." For them "it is written" is ultimate constitutional law. Ultimately, and governmental questions are all ultimates, the only thing that is expedient is the thing that is right. The actual constitution under which a people lives is then the system of its institutions, of which the actual agencies of government make up only a small and often unimportant part. I go once a year to the tax collector and pay a small contribution to the support of the politicians and the return I get for my outlay is that I am deceived into believing that I am thereby being protected in my 'rights'; while the actual institutions through which I attain my ends and through which my rights are guaranteed are the (privately owned) gas, electric, water, transportation services, etc., which I sup-

port every day and which affect my purposes at all times.¹ In my application for the use of water I sign a contract which binds me to 'all rules now in force or which may be promulgated' by the corporation which 'serves' me. It is true that the corporation is 'regulated,' but the regulation is quite generally the other way about and exercised by means which statesmen have not yet learned to employ for the common good, by the corporation over the 'government.' And the situation I must recognize as right, or is the basis at least of any right order, for the principle is that I am governed by the agencies which define and control the processes through which I attain my ends. But it is a rather sad commentary on the assumption of an order imposed by reason. If the control over these processes is irrational, it is so because I have accepted in advance a constitution which is antiquated and have rested my case in a system already 'founded' in reason, instead of recognizing the constitution which exists and is real only within the principles of practice of institutions. The fact that most government is unsatisfactory results from the failure to recognize the real governing capacity in the order of institutions, and to assume that government is a matter of authority of a specialized machinery. There can be no rational government so long as economic, educational, religious, legal, etc., institutions are irrational, since it is their combined propulsive urgency or will which constitutes real government.

Such is the effect then of a constitution founded by reason voluntarily and in advance of fact upon the institutions which grow up spontaneously by nature. Such systems, being in the main out of touch with the actual processes of life, have no other alternative than to reestablish themselves periodically by war and revolution. They represent external and merely repetitive process. And yet it would be futile to inveigh against the use of reason in public affairs, or the attempt of reason to take advantage of future fact and to plan for exigencies that may arise. In fact it can be said that it is the function of practical reason or intelligent will to foresee consequences and to prepare machinery for dealing with such consequences as arise from 'nature,' and to create the antecedent conditions of the consequences which are to be brought

¹ Cf. Bryce, *Studies in History and Jurisprudence*, for the distinction between virtual and actual government.

about through design or will. The practical and constitutional problem is then how best may situations be foreseen and how and by what sorts of institutions can probable consequences be realized as fact. And the answer is that attention should be given to experimental method. The substance of constitutional law should be contained in the 'flexible clause' of the constitution. And this substance should be the voluntary and deliberate recognition of the procedural or growing character of institutions, the recognition that institutions have their life in their adaptability to circumstances as they arise. The real constitution under which a people lives, and which expresses its real will is not the body of fixed doctrine set up in advance; that at best can only be a definition of larger ends in the merest outline, as an ideal for legislation; but the system of actual procedure as embodied in the life of institutions through which ends are attained. It is argued that adaptability of fundamental law is effected through judicial interpretation, but judicial interpretation is to all intents in practice governed by the assumption that the meaning of law is fixed in the words which give it form, and that there is little or no freedom in injecting new life into the words, since although most law is judge-made, its model is precedent. There is the tendency also to neglect the fact that standards of interpretation are themselves derived from extra-legal sources in the life habits of industrial, etc., institutions. But the merest modicum of intelligence outside the presuppositions of the legal profession knows that words have no inexorable and inevitable or incorrigible meaning¹ and that it is the spirit of language which carries its meaning, and that that spirit assumes new content with each new application. The nearest approach to real life in the case of the law lies in its procedural elements, and it is to be hoped that the procedure may some day become the basis of the substance of law as is perhaps the case in common law and equity.

The real end that has been achieved then under the conviction that men should voluntarily and consciously take their order of life and destiny into their own hands is that the larger ends of life as determined by modern conditions have been more or less clearly defined and the interest in such

¹ Cf. Holmes, *Collected Legal Papers*, New York, 1920, p. 203.

ends has been made fairly universal. That is, each human interest has, under the influence of reason, embodied itself in more or less definite corporate form. But it begins to be obvious that the purely rational state, the state in which a system of pure rational law is superimposed upon the institutionalized facts of life, has had its day.

VII. OBJECTIVE WILL AS PLUPURPOSE

(4) Objective Mind or Plupurpose. There have, however, been a number of reflex and unintended or at least not directly intended results of the efforts to bring human affairs into clear consciousness, and some of these are perhaps more important than any of the intended ends. Procedure itself is an institution which has grown out of nature to offset the fixity and inflexibility of a substantial program prescribed by reason or by the hard irrationalities of custom.¹ And the whole doctrine of fictions is a monument to the willingness of men to be honest with themselves. But it indicates that they are not equally willing to be honest with the facts. The long list of survivals in the theory of government and of vestigial structures in the actual machinery of government and the corporate body of the State have begun to appear ridiculous because of the ingenious means that have to be taken to evade them or to avoid their consequences. And the curious thing is that in the very act of evading them we construct reasons to show that we are acting consistently with the established form, and often succeed in thus deliberately deceiving ourselves.²

We shall argue here that the evasions and subterfuges with which we trick ourselves are at least aspects of the realities, and that what we consciously recognize as the real we often unconsciously but effectually disregard. While the effect of this sort of thing on the integrity of the reason is perhaps bad, yet I should argue for the use of reason and intelligence along with the fictive imagination in the problems of public life.

This combination of reason with will and the idealizing

¹ Holland, *Jurisprudence*, Ed. 9, London, 1900, p. 338.

² It may have been this fact, rather than the assumed unintelligence of the masses, that induced both Plato and Aristotle to accept deception as one of the necessary methods of government.

capacity, as distinguished from the dry light of reason with its tendency to fixity and authority, since reason has usurped the term purpose, we may call plurpose. It deliberately accepts the inert and customary and unconscious elements of life, along with the instrumental aspects of nature, as parts or factors in the constitutional principle of the whole, and as the basis of its corporate order. In (1) it was argued that there are objects which are given as part of the conditions of life to which reason and will can have only a utilitarian or practical relation and never a constitutional relation. They are therefore to be used, perhaps modified in some slight respect, but never constituted or created by human effort. They are taken as what is furnished by physical nature and history as the materials out of which, taken as they are, ends can be fashioned. These I have called the accidental or raw natural elements or determinants of human organization, and they may perhaps better have been referred to as necessitated. They are material in that they form the ground of the corporative tendency, the tendency of reality to take on objective ordered body antecedently to its becoming manifest in the operation of purpose. There are certain elements of external nature, and they include certain of the anthropological and psychological characters of men, which are given; and these elements may be conceived as the main determinants of the earliest forms of human organization into corporate life. In (2) it was shown that these elements become, perhaps through sheer usage, more or less consciously felt as essentials in corporate life, and when the purely physical facts are interpreted in terms of process, and the purely anthropological facts in terms of will, there is the ground laid for the identification of a life order as consciously envisaged with the system of outward processes. This identification made possible the conception of nature as law, and the idea of ordered regularity came to be conceived as the essence both of life and of external nature. This identification of will with the nature of things gave the consciousness of the ultimate esthetic satisfactoriness of things which resulted in the fusion of fact with thought in the perfected objective systems of ancient Greek life. The same factors therefore that produced the Greek state produced also Greek art and Greek philosophy. But it is the very excellence of these systems which, finally, resulted in their

dissolution. It was, I suppose, the satisfactoriness of the effect of those systems upon the mind which resulted finally in the 'socialization' of the public mind and the hardening of that mind under fixed forms. It matters little for any but the esthetic view, that the forms were perfect; they failed to continue to be dynamic and to break up the quiescent satisfactoriness which came from their contemplation. The consequence in any case was stagnation due to the socializing tendency, and in the traditional period the conscious acceptance of custom as law and the attempt at the adaptation of action to custom soon resulted in dissolution. The motive of designed harmony, which had a flash of life in the earlier period in the conception of nature as law, was smothered by the legalization of socially accepted custom. But it gave as a result the ideal of perfect corporate form. In (3) we saw the resurrection of conscious purpose as applied to the order of life, but, perhaps due to the lack of faith in the human systems that had failed, purpose is regarded as individual and personal and atomic, and becomes generalized only by being mechanized by such concepts as 'rights' and 'contract' into a scheme which once established is intended to be fixed finally and forever. But we saw also in this connection the tendency of purpose to get itself adequately expressed by hook or crook when direct means were denied it, that it proceeded in its own way by experimentation in spite of the fixity of systems, and achieved ends that are perhaps the highest in human life. The highest aims then are often reached outside of and in spite of the established and customary machinery, which invariably represents superseded purpose. It is then in the incidental methods and 'free' fictive institutions, the institutions which grow up out of actual fact and imagination process, which form the constitutions of states that are real and which can claim respect. These incidental purposes which get expression in spite of fixed institutions are cases where the "public will" is creating new institutions more or less independently of individual wills, often without individuals being conscious of what is going on.

We saw in (4) that the incidental consequences of deliberate life processes are often of greater value both positively and negatively than ends attained consciously. And we mentioned the procedural aspect of law, and might perhaps have added the whole system of equity, and some of the instru-

ments of government, e. g., administrative agencies, which sometimes operate to produce desirable effects outside the law. But our best method is to look to those life habits and life relations out of which government arises, rather than to the governmental machinery itself. We refer, therefore, to the ordinary processes of industry, etc., in their development during the period of their formation into their present form.

What I am arguing here, under the head of (4) plupurpose, is that institutions which are used reflexly, but often not understood by individuals, in their order constitute and embody the corporate will and also appear as direct products of the general corporate will. This of course raises the question of the effective power of the corporate will, or its executive functioning *independently of the individual will*, a much more difficult question than that of its 'existence.' Before we can get on with this point some of our general results must be reviewed. What is intended or forethought by the individual mind as a result which is good 'on the whole' or 'universally' or 'absolutely' is thus conceived abstractly because the individual mind perceives a discrepancy between the end intended and its own capacities to effectuate that end. The end is then considered as 'ideal' or 'possible,' or may be regarded as social and thus calling for coöperative effort, and is indefinitely postponed in its execution as a mere hope. The end as good remains subjective and can never be quite equated to the objective state of fact which is the make up of the individual mind. This does not preclude, however, that action will produce significant effects, and while attention is diverted to deferred ends, the effects will take on forms of order unnoticed by the persons acting.

VIII. THE DEDUCTION OF OBJECTIVE WILL

Here is a state of fact then, which wills only itself, so Kant is right about the existence of such a will. But since the action is not ended outside itself it is not moral, it remains a state of fact whose objective complement in so far as there is one, is a perfect likeness of itself. It is a special situation which carries its specialized end in its immediacy. Through its variations of form it constitutes its species as a classificatory type, the mere abstract quantitative outline of a given and definite

set of qualities. Outside of this typic outline the organism, for example, has no reference, it bears its end in itself as the bare repetition of its beginning. Its species is therefore fixed, not necessarily in the sense that it cannot change, but that its changes will always follow the inner, i. e., subjective direction of self-reference. It is consequently a *circulus in vivendo*, not a whole of functional relations with unlimited possibilities of reference to what is outside it, but an ingrowing continuum revolving constantly about its own specificity. It is the individualized will, the will negatively specialized with reference to itself, the exclusive will of the law. It therefore is appropriately described in terms of mystical inherent and peculiar and 'natural' properties. Its law of self-preservation is its right to live as an isolated entity and its law of reproductive repetition is its right to isolate ends to itself as private property as means to its indefinite repetition. Its 'uniqueness' guarantees all these rights against all the world, and the limitlessness of its continuity gives it right to indefinite multiplication of its ends as exclusive. But in the exercise of these 'inalienable' rights it comes into conflict with the 'equal' rights of others—the infinite force meets an immovable object—and by 'contract' it comes to a *modus vivendi* with them, the most monstrous falsity that ever infested the mind of man. The fact is that this individual as will is a contradiction in terms from any point of view from which it may be approached, and the fallacies which have come as its spawn of social and political theories as to how originally unique individuals ever 'got' together are the shame of human intelligence. And they are the more vicious in that they are all of them half truths, or rather perversions of the half truths which come from the mind's effort to restrict itself within the limits which its own distorted concept of individuality tries to impose on it.

The question is, then, how this self-ordered complex of indirect and unintended effects of action becomes will or attains personality, how it becomes ordered eccentrically with reference to an end outside itself.

The corporate will as a personality is the individuated will, not the individualized will. It is the will which as the order inherent in a state of fact effectuates itself through growth effort into objective existence. A state of experienced fact

has, as individuated, its objective complement in a state of fact within which its negative and private aspects are made positive and potent by incorporation. The original state of fact is embodied within the objective by the principle which indicates degree relations between the two states. These states are not states of "mind" primarily, nor need there be in certain cases any aspect of mind in the ordinary sense involved at all. These states of fact are incipient minds. It is this circumstantial relation which substantiates both mind and its opposite, antecedently to qualitative determination, and qualitative relations or differences need not be assumed between mind and its opposite but only within the constitution of mind itself as objectified in fact. At least for purposes of discussion the distinction between mind and not-mind can be ignored. What we are trying to do is to get behind the distinctions which are based upon individualization of the real, and to discover the principle of individuation *within* the real. This on our method involves merely a description of fact as fact appears in its immediacy. Fact, as ordered typically, is will.

If we recall at this point our description of the individual will as the individuated will, it will be easily possible to go over at once to a description of the corporate will. It is strange that it should have ever been necessary to justify the corporate will to those who have insisted so strenuously upon the peculiar reality of the individual will. For unless the general or corporate will is real through the same qualities that establish the reality of the particular will, we are faced with the necessity of asserting that nothing is real but particular existence, and that would negate the logic by which the conclusion itself was attained which states that only particular existence is real. So that this sort of nominalism is scepticism of the same sort and for the same reasons as the particularism we have already described, or as the specialism which attempts to identify the general with the internal and centripetal and private relations of the particular as specific situation. We have already indicated that the facts in a case of individual will involve no mystery, and have already made some effort at their description. It will be convenient here to recall the essential facts of an act of will. We have stated as the foundation fact which differentiates will from cause the propulsive tendency of an idea. And by this we mean to refer to the simple

fact that any idea, every idea, tends to express itself in outer or overt form through processes in the organism, that is, tends to effect itself as order. The organic processes are themselves part and in particular cases perhaps all of the overt expression which an idea requires; but in the majority of important cases some change effected among objects other than and outside the organism is the final issue of an idea. This is what is meant by saying that all thought is practical, and all that is meant by saying that thought is social. Further, by the term idea is meant all those so called 'inner' processes which are or may become conscious, and this doubts whether the distinction between reflex, ideo-motor, impulse, etc., on the one hand, and idea, judgment, etc., on the other, as backward references to 'inner' states, at least, is of much consequence in any other sense than as indicating degree differences. The term idea in its widest meaning implies 'inner' state regardless of the degree of awareness which it carries. But for moral or practical purposes the term is restricted to situations involving more or less conscious ends. And the term will, as a function, refers to the fact that ideas tend to express themselves outwardly through action in the organism. And this includes all degrees, upward from the simplest, single qualitative effect upon an object to the most complicated and intricately organized constructions of imagination, where even organic reactions are objectified ideally. What there is of fact in a case of "willed" action is a state or complication of states of awareness followed by motor effects in the organism connecting with the qualities of objects. The awareness may be of any quality, or any degree of a given quality, and the 'subjective' aspect of will is simply the expansive and fluent tendency of ideas to grow into complication with other ideas. And this tendency described as fact is the relation of order that invariably marks distinctions within facts, which always show complication. And this complicatedness of ideas as a fact may be erected into the principle that no conscious fact exists alone or as undifferentiated quality, since when the distinctions within consciousness disappear the consciousness itself is lost. Then the internal aspect of will is a complication of conscious qualities, remembering that no conscious quality exists as quality without the tendency to expand or grow into objective complication with other qualities. It is then the fact of inherent

order in conscious states; and if conscious states appear as isolated, it is simply because the tendency to expansion is equal in all directions and no particular point of connection is as yet indicated, a tendency which may explain both logical consistency and esthetic balance. When the connection is made with a definite point the situation would be referred to as attention; which indicates once more that the various names given to conscious states merely indicate degrees of development within the states and their ever present relations. Will, then, in its subjective aspect, is the tendency of ideas to stretch out so as to assume qualities and forms which mark them as different from their inceptive quality. The propulsive or executive aspect is will in its inner sense, is the idea looked at as completing itself in another idea form, and in this sense is identified with the continuity of ideas in thought or imagination.

The propulsiveness taken as 'effective' is the same process as it connects through the organism with objects outside in sense or space and time forms. The 'objective' aspect of will is therefore the permanency of form or regularity of expression given to it by the inertness of material objects or by the substantiality of thought objects. The objectified will therefore, the will as real, is the will carried out and given form in the substance of material things, just as the objectified or incorporate idea as universal is the idea effected in forms which will stay put in a set-up of fact for the use of any mind which cares to think it. The idea of 'pure' thought or the 'formal' will has reference to the subjective or inner conscious quality not as it is in fact, but as it appears as the object of another and different idea or purpose. It is therefore abstract in that it is severed from its natural relations in fact and made an object in other relations where its qualities do not readily connect with present consciousness. The characteristic feature of will as function then is the progressive or propulsive or out-reaching quality of ideas, what the idealist describes as the 'reference to an object other than itself.'

We come back now to the attempt at a formulation of the corporate will. We have already described in the discussion of individual will, which we have just now restated in its psychological aspects, all the essential characteristics of the general or social will. The completed act of will we saw distin-

guishable into an inner, private, 'conscious' aspect and an overt, outside, substantial, common, sharable, objective aspect. And what we have described as a single and continuous act in the individual mind is applicable at each point to the 'social' mind or to 'mind as such,' with the exception of the quality of consciousness, which, while essential to individual will, is not universally an aspect of objective will. We saw that there is no hard and fast distinction to be made between any two conscious states, and that an objective effect is what it is just because it is not 'owned' by any particular state. It must also be remarked that, so far as any facts go, the idea corresponding to an outside object which occupies my attention at a given moment is distinguishable from the idea that occupies another's attention at the same moment only in terms of differences within the common object. The assertion that one idea is mine and the other another's is meaningless, or, if not meaningless, then the possibility of objectivity for any idea in anything more than an abstract sense vanishes at once. In any case, objectivity does not depend upon consciousness, since consciousness is necessarily inner and private. So ideas are nobody's private possession, and, *as fact*, there is no idea that can be identified with a definite 'natural person' except through an object which is mutual as respects all other persons. But if this is so the distinction between one mind and another is obliterated in all cases where it could have any meaning in terms other than blank subjective uniqueness, which leaves uniqueness meaningless. Facts cannot be described in simple terms of the distinctions between them; it is not distinction that is real, but the things distinguished. Then the *facts* in the case, regarded as mental or subjective present qualities, and the tendency of these qualities to grow into other qualities and *on* to things is precisely what is meant by will and spontaneity when will is anything more than a myth. These states are nobody's, just because they are everybody's, and things as fixed states of fact are by definition what can be used, thought, transferred, made, destroyed, etc.; are the relation on a basis of which only can any distinction of minds be made at all. The facts of will then are objective and common, and no description of an individual mind in so far as it applies to the volitional function can be made which will restrict it inside an individual mind considered as private to

the natural person. The individualized mind is unreal; mind is absolute: as will it is just the universality and indifference of reference which makes the possibility of systematic order.

Then the only consistent account of will is to describe the facts of mind and will as objective, without reference to that quality of facts which is sometimes present—consciousness. A state of fact consisting primarily in dominant isolable qualities which in their relations among themselves are conscious and inner, as a matter of fact connects with another state of fact which in its quality is primarily relatively fixed and permanent and objective as the point of issue for other conscious purposes in general and as such. Consciousness is thus not a constitutional aspect of will. It is therefore process and has no reference to objectivity as end. The latter state of fact, described in its integrity as purpose in general, is objective in that it is indifferently the completion or point of reference for many internal complexes of fact as voluntary; the former is subjective in that it represents a specified order and relationship of quality. But both are complications of many different factors, and since the objective is present in all cases which are real, the facts of mind as objective are indifferent to the minds of individuals in so far as these minds are conditioned by consciousness or mental states. Then the same content of quality with an identical urge of propulsion may occupy the mind of different individuals at a given time, and will do so in the presence of fairly simple and uniform situations in outside fact. And the same state or act of will is often the effective function of states of fact in which human individuals are negligible or at least unimportant factors. Perhaps we would not speak of will in the complete absence of human individuals, but will is often obvious and important where “persons” are of little consequence. The ‘mind’ in such a case is made up of elements which are peculiar to no organism, although there are perhaps important differences in detail depending upon the difference of objective fact due to differences of point of view of the different organisms involved. The mind in the situation is the total of qualitative meaning, and as whole is independent of particular incidence in organisms, although as will considered as function it must operate through organisms upon the objects which it is to affect. That the mind as objective or real is a common possession is evidenced

by the only kind of evidence we have for the existence of mind at all, viz., the character of the action through which it expresses itself. And this is not necessarily a reference to the "psychology of the mob," for we are describing a situation in which persons are relatively unimportant factors; for a much better illustration of common will is to be seen in the general assent and identity of reaction which follows in an intelligent audience from an argument convincingly but not too persuasively stated, *i. e.*, from an object made concrete a mind as universal follows. Or a still better case of such mind or common will is the agreement which persons of violently opposed purposes may reach after discussion. They come to common terms on the matter of objects (both in the sense of external things and as ends) and their minds are made up into one single propulsive force in the resolution which they unanimously subscribe to as the method of effectuating their common object. "Personalities" thus are neglected in the more or less automatic make-up of the objective factual situation. And one member may light a cigar, another propose a drink, another offer prayer of thanks, another become boisterous, and another shut up reflectively in himself, all as outward expression of community of thought and feeling among them, just as the individual in different cases in his own private problems will do all of these successively, and these 'subjective' aspects of the matter are recognized as of no consequence, the meaning of the various types of reaction being the common reference to a common object, which, by theory, these reactions *never* express. And the main difference between individual will and general will may be a difference due to the fact that the individual's experience, as psychological, is successive, in time, and in one dimension alone, while the general will is an intersection of many such series, which, as integrated, constitute the object as substantiality. The individual will is thus narrow and private and self-referrent and subjective, while the social or general will is spatial and expansive and comprehensive. Coexistent qualities then give to the social mind the synthetic and sympathetic or comprehensive function, as we say that in the multitude of counsellors there is wisdom, not in their manyness to be sure, but in the divergence or diffraction of their vision from self-concentration due to mutual stimulation by a common object. The vision which comes from

agreement, the common or objective will, is expansive and comprehensive not in that it looks beyond individual purposes, but in that it correlates and incorporates in common external objects the purposes of the various individuals. While the purposes of the individual, restricted to their time relations in memory, tend to concentrate inwardly and converge upon an extentless and contentless point, they are isolated from their objective locus in the shared continuum, and hence unreal.

IX. THE SOCIAL WILL AS CONDITIONED ON COMMON OBJECTS

Will, then, as the fact that reality as ordered possesses propulsive power, is the essence of individuality, but makes no special reference to natural persons. The same facts ordered slightly differently may principle successively all the different degrees of individuality from the natural person to the State.

Then the social or general will bears the same relation to the individual will that the universal bears to the particular generally. There is no more mystery or mysticism in speaking of the reality of the general will than of the species of oak. What of fact there is in either case and in both cases is immediate and objective and common, so the only requirement is adequate description and interpretation, which is equally the problem in any other connection. The general will is real, and is in fact what gives reality to the individual will, since individuality is completed only in the universal. The one is the complement and end of the other, and their relations to each other are identical with the relations between different stages of growth in anything else. The growth of will is identical in detail with the growth of an idea or a plant, both involving the propulsive force or expansive tendency of life and the complication of the manyness of distinct fact under the form of a specific type of order. And the descriptive terms used in one case will also hold in the other. Reference to will as a function of particular persons serves the purpose mainly of specifying or singling out of objects in the environment and of indicating some of the qualities of objects which invite human use of those objects. That is, defining will in terms of its qualities is merely pointing out some of its qualities that are common to objects in the environment which

make them fit instruments to human ends, or which make them the complement of inner feelings as esthetic objects or types. And the large element of esthetic curiosity, the mere consciousness that a given external object is the lodestone which will tap emotion and draw off collected masses of feeling and thus relieve the irritability due to unfulfilled interests which get pent up, is responsible for a large measure of the tremendous power which possession holds over us all. The idea that the property interest means greed or fear of want is nonsense. Property means the capacity to execute willed ends.

Property is then perhaps the best illustration of the object of will, and though discussed at length later, may here be indicated in its will aspects. The object possessed or coveted is recognized as a part of the life of the one who owns or may own it, because it and it alone appears as the objective and complementary aspect of his will, as the only object on which his interests and feeling may be poured and thus crystallized into permanent value form. Half the power of ownership is to be attributed to the unconscious longing to make permanent and stable in a fixed object the fleeting sense of beauty or worth of a perceived moral or esthetic relation. It is not necessarily or in all cases 'greed' or love of power then to desire large possession, it may be the demand for an object which is large and exclusive just in proportion to the value to which in the possessed object we hope to give adequate expression, and which we feel to be exclusive and extraordinary and unusual, just because it seems peculiarly adapted to our purpose. The 'mine' really is that which esthetically or morally possesses me, and it is a commentary on the quality of my sensibility if its object is crude. It is of course unfortunately true that in most cases the possession of large means does develop the mere animal greed, but it is the means for which no appropriate end can be foreseen and not the love of means as such which is the root of the evil, that is, the disproportionateness of the external object to the inner felt value causes the value sense to dry up. And the fact that ownership applies to objects, i. e., to what is necessarily common, makes the will end itself in the larger whole of objects which has come to be called the commonwealth, the object ultimately of all will even in its most particularized expressions. Perhaps the law

of inheritance finds its meaning in the demand for an objectification in the form of a permanent common end of the will which creates values of large worth, and if it is given the form in law of restricting ownership to particular inheritors it does so not so much to maintain the line of inheritors, as it is interested in maintaining the line of inheritors in order to hold together the property as the object in which common or universal value is embodied. It attempts to perpetuate the personality of the property, not the "person" in which ownership inheres.

Then every act of will is the act of the general will. Its ultimate aim is the mutualized system of means to the embodiment of ends which, in the nature of the case, are never private or particular. Stated thus in terms of means to ends the will is practical, and as stated in terms of ends it is the 'theoretical' or imaginative or projective or definatory function which we call thought, a function whose purpose is to discover or create ends as points of issue for the ebullient urgency of will impulse. And will as thus ended by intelligence in its appropriate object is the moral will; while impulse which is not thus ended or is inappropriately ended is the immoral or 'ill' will. Now it makes no difference whether this language is made to refer to particular or natural persons or to persons in general as organized social bodies; the fact is that the description of fact is made most adequate when there is no reference to isolated persons at all and the description is left to apply universally to will as neither a private possession of persons nor as a mystic entity which belongs to groups. The structure and nature of will is the same whatever the degree of individuality is involved. It is best described objectively, i.e., by reference to the facts as self-subsistent and independent of any localization. It is a remnant of the old 'efficient cause,' or 'potency,' to insist that will is not selfsubsistent and must be referred to particular organisms, a reference which contradicts every other character which we attribute to will. We do not ordinarily specify the particular cells which act in the contraction of a muscle, or (lately at least) single out the tissues of brain which produce a particularly bright thought. And it is only recently that we are beginning to learn that what we have called the acts of specific persons are after all

acts of the superpersonal,¹ or as we have called it, the pluperpersonal will, and it is the more difficult for us to accept the point merely for the reason that we happen first to find the principle true in cases of perverted will in what are called crimes. This is the meaning of the practice of holding the 'conditions' or the 'system' as culpable in the case of a criminal who has had no 'chance' through education, and the practice will become rational when we have learned what are the conditions involved in a 'chance.' Among these important conditions will be the common objects (both as instrument and end) of life which have become expropriated from their proper moorings in the normal impulses by such monstrosities as the institutions of private property and contract. The point is that these institutions are will, and if they are perverted the result is criminality, and this would be true if there were no cases of particular persons committing particular wrong acts. And this means that criminality, culpability, responsibility, etc., must be understood as not mystic qualities of unique natural individuals, but as cases of objective fact which are better called simply unimpersonated wills and which are to be eliminated when adverse to the common end just as we attack small pox, not by killing the persons who happen to be sick but by overcoming the disease; or cultivated as we develop a wild plant to the uses of life. It will be difficult of course to universalize the concept of responsibility by reducing it to the impersonal objectivity of fact, and train our minds to hate the sin and love the sinner; but the facts are beginning to impress themselves even upon the hardened juristic mind, as is evidenced by the various types of investigation of all sorts of facts that are beginning to be carried on in connection with complicated questions of adjudication. Will is then a universalized situation of fact which involves impersonal along with personal elements, and it can be understood only by adopting an objective point of view of the whole and not by equating a subjective element to a supposed corresponding objective element by a one-to-one linear causal arrangement of facts taken singly.

¹ The objections to the "collective will" of sociology as dominating the individual's action come from the effort to specify causes as social instincts which correspond to particular forms of the individual's action. It is the interpretation of collective will in terms of acquisitiveness, for example, as the 'instinct' which dominates the individual, which makes nonsense of the 'collective will.'

There are no single facts, and as a consequence there are no isolable entities or causes which correspond to them. The distinction of individual will and social will is not a distinction of types of will, but a distinction within the nature of will. Will is always universal, just as it is always objectified in a concrete thing.

This is illustrated once more in the training or education of will. Even in the old-fashioned practice of beginning the child's education by 'breaking his natural will,' the methods employed had to consist in manipulating the objects through which that natural and perverse will expressed itself or in which it embodied itself. And the whole theory of teaching (except when in the hands of experts) is expressed in the proposition that in order to reach the individual's mind you must manipulate the objects which are the common body of all minds. Mind and will, when 'right,' are regularly ordered attitudinal complications of these objects, and fallacy in thought or perversity in will are disturbances of these orderly arrangements, or orders of fact which will not assimilate with the common or general 'right' body of fact which is the basis and ground of significant action. And the make-up and quality of one's mind we say are due to hereditary mettle as the accumulated will of history, as well as to his experience and the opportunity he has had in the way of exposure to common or instituted fact-forms in the social medium. In fact, the mind of the individual is just the order of these forms specialized into attitudes by his dominant modes of feeling and imagination. The will of the individual is just that order become effective in ends. And these feelings are again the precipitate of colorful image-groups which have become outstanding and more or less permanent in his nature through the re-enforcement of similar attitudes generally expressed by other persons in his presence. Thus even the privacy of feeling shows its ground in the object-situations which are common, and though *de gustibus non disputandum est* we will never cease to quarrel until the harmonies of art are brought into forms which correspond to harmonies of thought and will. Art criticism would be nonsense if feeling were entirely subjective, and the fact that much of it is nonsense is due to the tendency to regard values as somehow other than and different essentially from other forms of the objects of experience.

But the fact that art is essentially the embodiment of attitudes in common and sharable form is precisely what is responsible for its universal appeal. Then to insist that it is pure immediacy of feeling sounds strange in connection with the equally common assertion that the object of art is universal. Art is feeling precisely because of the nature of its quality and of the necessity of its being mediated through the organism as the proper instrument of attitudes. But this same fact also gives it the most necessary element of objectivity, viz., out-sideness in its exposure to the common mind, and this detachment from the individual creator of it makes it a possession unto everlasting as the common ground for human feeling, and as the impersonated object of human thought. If it could be given complete individuation in an appropriate object, the act which creates an object of art would be also an act of will, and its object would be a person. From any point of view, then the complete fact is the universal will, and the difficulty is not how the individual will can be aggregated into 'general' will, but how the assumption of individual wills can be made consistent with immediate fact. Of course it is true that the individual will is real, culpable, responsible, etc., but what we must see is that none of these characters imply isolation or specialization by drawing absolute distinctions among wills. Each of these terms on the contrary refers to the universal for such meaning as it may have.

To speak of a unique will that is at the same time responsible is equivalent to saying that a will whose essence lies in its being cut off from all else is yet bound to another in a sense that implies changes in its unique nature, and this to the mind that respects consistency is a contradiction.

X. SUMMARY

Theories of individuality have quite generally implied uniqueness as its essential character. That such an implication is wrong is evidenced by the fact that all our institutions of practical life which have been founded upon such conceptions of individuality have demonstrated their own inadequacy in fundamentals by creating undesirable and unmanageable instrumentalities. Man is a victim of many of his own practical processes. And these processes are corollaries or indirect

unintended results of the idea or purpose which ostensibly controls practical life. The fact that these instrumentalities are undesired and undesirable is not the point of emphasis here however. Their significance lies in the fact that their natural origin suggests the means through which adequate and appropriate instruments may be created. This is not saying that everything in our individualized system is wrong and bad; but it is saying that all our individualized institutions have failed in some essential purpose, and have come to the point of serving ends for which they were not intended as means. Our theory of objective mind or general will suggests that the mode of approach to all questions arising out of personal, social and racial contacts and conflicts in the case of group relations, and out of maladapted moral relations in individual life, is through the institutions in which these personal and natural and social attitudes are embodied. This embodiment is the corporate will. The fact that these institutions show glaring maladjustments to clearly defined purposes indicates not 'bad' or 'wicked' tendencies in the men who use the institutions, but structural defects within the institutions which have come of late rather to use men. The institutions have got out of hand; they attain by indirection ends they were never intended to attain but nevertheless ends of a higher order than those aimed at. It means that a thoroughgoing and downright analytic examination should be given our institutions in each case by those who are expert in its universal meaning, and a complete redirection of means to the purposes they appropriately serve, and a reappropriation of the machinery of life to the ends of life.

I suggest that when this analysis is given to our institutional life the fact that will be found typical and the key of all our forms of organization and order will be the corporation as embodied social will. It is therefore necessary to examine into the idea of corporation regarded as the embodiment of the law of corporate reality, to see if any unambiguous statement of the nature of the law can be made, and whether any clue as to the form the law will give to institutions in the future can be discovered. It will then be necessary to construct the generalized and theoretical aspects of the question out of its practical manifestations, and for this purpose we shall look into the institutions of law and politics, and the

institutions of practical life generally. It will appear that will as the directive energy of life has embodied itself in forms which, while of the same order of constitution as natural persons, are not directed nor controlled by natural persons; but in which natural persons become specialized instruments to the accomplishment of objects upon which traditional individualistic morality is not prepared to pronounce judgment. Nor can the individual divest himself of the relations thus imposed upon him, since no ends which he adjudges as worthy can be attained by methods other than those prescribed by the individuated whole of which he is a part. This higher individuality is not 'conscious,' and yet it prescribes the forms in which conscious purposes are to be realized; and if it is not to become the Leviathan which shapes the ends of man in accordance with the destiny incorporated in its own nature, the problem of control in human affairs must be worked over from the ground up.

We have been in this chapter approaching the problem of will as order with a view to determining the principle implied in whatever is to be conceived as the propulsive or directive agency in human affairs. It appears that the element of furtiveness or indirection or deviousness or Fabianism, possibly even "chance," if not the essence of will, still lies very close to its essential nature. We shall see this element appear in the next chapter in its subjective form as the institution of fiction in law, and in its objective form as the effective inertia of corporations.

CHAPTER VII

THE THEORY OF CORPORATE ORGANIZATION AS LAW

Our theory of the nature of personality has been somewhat fully stated. Its main contention is that there is no fundamental distinction of kinds of persons possible, but that all types of personalities are personalities precisely because they are constituted on and by the same principle. This principle of individuation is hard to state in brief terms, but the idea is to be got at from the general point of view indicated in the description of personal functions. These descriptions have assumed the simple matter of fact concepts of jurisprudence, which has attempted to give them matter as content in accordance with the facts of logic and ethics, and, of late, of sociology. We are here making no presumptions to a knowledge of jurisprudence, not even to philosophical jurisprudence, but are endeavoring to give to the conceptions ordinarily used in serious considerations of human affairs such interpretation as the closest analysis we can make will justify and allow, and in this endeavor it is often convenient to employ juridical terms. It may be well to bring together our results with respect to the concept of personality, in order to give definite form to a point of view from which certain questions of the legal (using the term legal primarily as the common-sense synonym for universal) attributes of persons may be examined. In this point of view the fundamental thesis is that individuality, in whatever form or degree, is a corporate entity, which means that it always involves an order or organization of fact in accordance with a definitely determinable principle. There is then no fundamental distinction of personal and social individuality, and it will be one of our corollaries from the principle of corporate individuality that there are individualities in which neither 'personal' nor 'social' relations are matters of principle, although they may always be present as fact. The theory of

corporation then involves a further analysis of the nature of individuality, and, as a legal theory, will involve the analysis of certain juridical conceptions.

I. THE FORMAL PERSON OF JURISTIC THEORY

Perhaps the most elementary distinction with respect to the nature of persons used in legal relations is that between the natural and the artificial. But I think it has been shown that no hard and fast line of demarcation can be drawn between the two, that even the artificial and conventional sooner or later incorporates into the natural, that the natural person, in unusual circumstances, becomes an institution, and that the basis of this proof was sought in psychological and logical considerations. Natural and artificial persons are then different stages of individuality, and are identical in principle. This can equally well be shown through an analysis of the practical ideas of legal and political theory, such e. g., as those of rights, duties, claims, etc.

Perhaps the whole sphere of human relations is involved in the discussion of the question of rights. A statement like a right is a claim which is protected or enforced by the law, or defined and created by the law, or merely delimited by the law, is a very much simplified statement made for purposes of practical adjudication, and is therefore limited to those aspects of the law which get emphasis in positive law enactments. Such statements imply therefore a more or less uncritical reference to the narrow group of qualities of persons which have become clearly recognized in historical systems, and are limited by the necessity that the qualities of persons be given for practical purposes definite effect in tangible form. The person thus described is therefore an abstraction derived from a selection of some of his practical activities as more important than others, and this neglect of certain fundamental characters in the personality has had serious effects upon legal and political thought. In the first case, it tends to put an undue importance upon the static and stable characters at the expense of the more dynamic, with the consequence that legal doctrines become rigid and unbending and unadaptable to changing social relations. Again, in placing emphasis on stability, the result-

ing personality is conceived in terms of fixity, and this leads to an over-emphasis upon such phrases as the 'eternal principles of justice,' etc., and their erection into dogmas. Such quantitative entities are also isolable, and relations between them become external, with the resulting interpretation of relations in terms of force. And from relations among persons thus conceived arise such dogmas as competition, authority, sovereignty of the state, with special emphasis on the internal or police power in which government becomes regarded as 'against' its citizens, and the result of this is the loss of confidence in government and contempt of the law. A law which is thus grounded in hard mechanical relations is entitled to little respect because it represents no intelligent appreciation of the nature of the citizen and his needs. Law and government under such an ideal become therefore a separatist and dispersive tendency in human life, and instead of representing the ideal unity of a people, come by processes of indirection to be the specialized instruments through which privately formed groups enforce their wills and interests over the citizen body. A right, as a claim which can be enforced by the law, becomes a privilege; and a duty, a service which the holder of a right can compel another to perform. This prostitution of the idea of duty, which essentially implies a reference of the moral individual to his public end as fulfillment, to the necessities of individualistic theory as a specific action in the interest of an other, whether the actor or another, is, from the point of view of morality, most deplorable. It is thus strange that right and duty, originally conceived as internal and subjective under the 'natural' theory, come through usage to refer principally to external relations implying power and force. The only possible attitude which such a situation can create in human nature is one that regards the law as inimical to personal interests, and which leads to all forms of evasion as the practical reaction to the attempt at execution of law through positive means. Moral right then comes to be what one can 'get away' with, and 'legitimate' action is action which the law, it may be because of technicality, cannot reach to enjoin or punish. And such an attitude on the part of the citizen is a perfectly logical consequence of, or inference from, the arguments that are used in favor of respect for the law and

of law enforcement. It should be reflected here that law can never compel assent, and that no state of will or purpose can be induced by force.

II. THE NATURE OF THE PERSON AS IMPLIED IN PRACTICAL CONCEPTS

What, then, is the meaning of the terms right, duty, claim? The attempt will be made to put the answer in terms of the facts of human relations taken in their immediacy. For it is not the meaning of these terms which is our real purpose here. The facts of human relations which these terms imply are constitutional to the real individuality which has rights, duties, etc., the individuality which the law contemplates in the "legal person." We shall find the legal person, the real person of the law, to be the corporate person, and the distinction between natural and artificial a fiction. My rights, let us say, are, subjectively, the assumptions which I may logically make with respect to such consequent reactions of other persons and things as will tend to objectify the results of my action in the form of a common good. The idea of right as exclusive or against somebody is rejected at once. Right as a concept of substance, is the universality of the person, it is his objective reality in the life of the whole; it therefore is not a private possession, but a public function of obligation. By a common good is meant such a system of mutual expectancies among persons and things as will justify planned action. My right, then, is what I can take for granted with respect to a plan of mutual action which will end in a good. Mutual not in the sentimental sense that I 'give way' to somebody's 'equal' rights but in the sense that all action takes place within a field of inter-referring and supplementing action by a plurality of agencies. Mutuality then implicates a state of fact and not a 'state of mind.' The 'end' is the issue of no action exclusively, and the end of no exclusive person, but a resultant of a complex of acts. So an end is *per se* public. I can perform no act which does not involve accessories in other persons and things. All action is mutual and willed in common, if our description of will is correct. The 'good' is then also mutual and public, with respect at least to the common action which creates it. And we shall find it is also common in rightful ownership as it

should be in actual possession. Stated in terms of its matter of objective content, my right is the opportunity afforded me, in the system of mutually recognized instrumentalities of life, to act in the way that ends my desire or realizes my will by fulfilling it. Or, a right is a mutually guaranteed access to things which will fulfill purposes. A right is a publicly supported access to the good. Its reference to what is public is, therefore, of its essence. My right is then objectified indirectly or deviously through the assumption of its universal in the system of human functions, i. e., the system of rights. It is in this sense that a right is 'natural,' a simple state of fact which results from the mutual assumptions which persons naturally make with reference to each other and to things. It is a state of fact which gives rise to legal consequences, a case where existence as ordered implies law as the universal. But it is also clear that, as such, a right is not an inherent quality of the natural person taken by himself, nor is it a quality of an artificial form established by law considered as a previously arranged agreement of contract. Right does not imply the existence or occurrence of any particular or specific antecedent fact at all; the right is created when the plan of life indicates a new act as advisable. The fact is that law is derived from right through the exercise of rights by persons. Consequently, law is not the mummified husk of supposedly significant acts of a bygone age, but the living and growing energy which sustains constant relations between acts and ends. It is in this sense that it is the guaranty of right and upon this that its claim to respect depends. Law is a statement of the mutuality of rights derived from the possibilities of common action. Since the real which it states is a whole it is universal and has authority in the rightness of the real. And opposition or exclusiveness and conflict are not constitutional traits in law, but facts in nature with reference to the removal of which laws are made. It may be well to put that statement plainly; it is the purpose of all law to overcome conflict and 'competition,' and not to generate it or to guarantee it or perpetuate it.

A right defined in this way, is, subjectively, an expectation with reference to the conduct of other persons and things, and does not differ in principle from the fundamental hypotheses presupposed in all action, even those presupposed in the ac-

tivities of thought. Right is then the freedom aspect of will. Right is the universal and objective whole for morality just as the ontologically consistent is the objective whole for thought. Right is the assumption of consistency and fitness with reference to growing reals, reals in process of completion. Logical validity, or correctness, is the assumption of consistency and fitness with reference to completed reals. The latter, the theoretical interest, is abstract; concrete logic is ethics. In the simple cases where my action involves only things and does not directly involve persons, if there are any such, the same phenomenon is present, although it would not ordinarily be termed a right. Thus I expect of oak wood certain definite reactions to my chisel, and I plan my ends accordingly in so far as my ends involve oak wood. I may say then in a figurative sense at least that I have a 'right' to expect certain results to follow upon the application of my energy to the oak wood, and if these results do not follow I may assume that the wood I am using is not oak, i. e., is wrong, does not embody the active possibilities of oak as universal. Oak is therefore not the principle which individuates the facts which are now present to me, provided that the unexpected results are not accounted for by some factor other than oak in the situation. The condition of being unindividuated therefore may be mistakenly attributed to the oak wood, in which case I have made a mistake as to my 'rights'; i. e., a right is a judgment about fact and may be in error. My right in oak wood still exists, of course, but I have ended my expectation mistakenly in a misinterpreted situation of fact. Or, a difference between a partial and a complete fulfillment of my expectation, considered from the point of view of matter or content, is the difference between good oak and bad oak. This description holds, whether I merely think oak or use oak, i. e., act with reference to oak. The thought attitude is not finally different from the active, every act is elementarily an act of thought. This also indicates the 'wrong' which is done when a right is unfulfilled or 'absent,' the situation of fact is there in any case, but the fact is individuated with reference to other purposes than that implied by the right. And the occasion for the wrong individuation is failure to estimate properly the complexity of the situation, which is to say that some elements of fact in the situation have been overlooked. What

I have attributed to badness in the oak wood may be due to a defect in my chisel or to a fault in my own movement. It may further be due to the fact that my action was not properly principled by a clearly formed end, i. e., it may be because of a faulty idea. Now any of these circumstances is a part of the object which is provisioned as the end or completed form of the existing state of fact. And the commonest difficulty of interpretation is perhaps due to failure to distinguish between elements of fact that are inert and elements that are spontaneous. This is the weakness of the 'economic man' theory in politics and the 'John Doe' theory in law. The assumption is that all elements of fact in a human situation are identical, and will stay put and conform permanently to logical assumption. Just as a change in temperature of the oak or in the incidence of light which falls upon it while I am working on it may make the gravest differences in the resulting end, so the capacity of certain elements of fact in a practical situation to act 'on their own hook,' to respond in ways which I could not in detail foresee, makes all my attitudes to such situations expectancies rather than calculable quantities. That is, it is just because of the element of will in experience that we can make the distinction between end and fact, as well as also to make intelligible the relation between end and fact by interpreting them respectively as growth and scientific law. It is the element of indirection in fact-systems ordered by growth, and its absence in classificatory systems, which makes results in the one case expected and in the other assumed. Now if I confuse expectancies with calculable quantities and assume that given phenomena in the two cases are orderable upon the same principle, then my results may be far from ends proper to the facts. And with respect to the doctrine of rights, this means that rights are never calculable in the exact sense of being inalienable and eternal, but show always the characters of variation about a principle.¹ But this gives the clue to the distinction between persons and things. Both together make up the complex of fact which is to me at once object and instrument for my action, and the ground of my rights. If I attribute a wrong quality to a thing, I regard the thing as

¹ If we wish to retain inalienableness we can say of course that rights are inalienable from the whole as the ground of right. But in this case we mean 'right' and not 'rights.' Cf. Salmond, *Jurisprudence*, Ed. 4, London, 1913, p. 300.

not good material or myself as having erred; if I make an unwarranted expectancy of a person, I may either regard the person as having contravened my right by a spontaneous and original act of will which might have expressed itself a number of ways, or myself as having erred in intention. But in any case there is the absence of a right in the sense that the situation of fact is wrongly principled, is individuated in a way that neglects certain fundamentals of quality. Thus the same method used in the description of facts in any case will serve also in the description of rights as facts.

Then rights do not inhere in subjects if we take subject in the isolable and exactly determinable sense as referring to a human being. This is the old assumption once more that the meaning of a thing is explicable by a mere reference to its source, and the source is often merely assumed. Once we are satisfied with a unique and self-determined entity about which no questions of its nature are in order, then we can by the same mystery say that the entity possesses rights, or that rights inhere in it, and we can give a twist to our language which indicates that further questions are not only superfluous but a profanation. A right is a state of objective fact involving persons and things, demarcated from other states of fact by its being the ground upon which 'prediction' or expectancy of values with respect to proposed action is based. A right is what I may do consistently with a given status of fact interpreted with respect to an end. And the guaranty of the right, the warrant of the expectancy, is grounded in the principle that an end is universal, objective, common. Ends are 'private' only in the sense that they are the fulfillment of *my* action. But it is the act that is mine, not the end. It differs from states of fact which have merely predictable consequences in that the expectancy is based upon principles of action which generally involve conscious forethought of the issue of such action, while a predictable consequence comes as a blind result of the operation of the law of necessity, and is predictable because it is present in its completeness of quality in the presented situation. An end is expected, however, not because it can be analyzed out of present fact as completeness of quality, but because it is merely indicated in present fact as a principle which may embody itself in a variety of forms of completed quality. A right has a ground therefore and not a cause or a

source. It is nonsense to speak of a right as originating in the individual or in law or in the authority of the state, or in anything, for that matter, for the simple reason that it is not the sort of thing that has an origin. And this means that it is a state of fact the question of whose origin or source implies that it must have been produced by a previous state of fact, an assumption that perverts the whole conception of right. For there is, after all, a certain absoluteness belonging to right, when right is considered as a quality of the nature of things. That it should be produced by, or derived from, anything which precedes it, is contrary to its nature. In a theoretical sense a right is a describable condition of fact in which the end of action is definable. For practical purposes a right is a set of conditions in fact which are the opportunity to and instrument of the processes whereby ends are given overt status.

III. THE PERSON AS SUBJECT OF RIGHTS

Then a right, a duty, and a claim refer to the same conditions of fact. Their differences are merely due to the point of view from which this condition of fact is approached. They may be stated in subjective and speculative terms of thought with the intent of making them universal and eternal and inalienable, in which case they become the substance of positive law and the standing problem of the legislator. Or they may be given a practical form, a form which has reference to or is intended to exemplify principle in its most specific instances. This is in the main the subject matter of common law, and is largely a precipitate of the procedural process through which specific ends of satisfaction to parties are found for cases where points of view as to fact are not immediately reconcilable. A right, duty, claim, implies then a 'subject' in the sense that it must have a status in fact, or belongs as an element in certain types of constellation of fact. There is a place where it inheres, that is, it implies a given order of immediate circumstance which makes it distinguishable from other constellations of fact in which there are no interests involved. From this point of view it is an interest which can be enforced, that is, it is a state of fact which can be ordered through proper mediation into an end which results in satisfactions. That is, the state of fact may be maintained in its present form for

me by action of other agents, e. g., the judicial authority. But the maintenance of the right may also sever its relations with me, which means a clarification of principle within the state of fact and a reallocation of elements within the state of fact. And the satisfaction can be made general, or such that when appropriated to a given set of circumstances it can be regarded as fitting for any set of circumstances of the kind indicated. That is, it, as a particular right, becomes the basis of a 'maxim.' The set of circumstances can therefore be regarded as impersonal in the sense that it is orderable without reference to specific natural persons, but always to circumstances in which natural persons are elements. The persons are then interchangeable, as is implied in the transfer of rights, and the situation can be generalized into such a form as will apply as an adjudicated end to persons as such. But in its specific form a right is the peculiar attribute of a 'unique personality' only in the sense that a right in the abstract or without reference to inherence in a situation of fact with a definitely describable character is not determinable. It therefore follows that the personality in which rights inhere is not necessarily the natural person; or the natural person is the center of inherence only as the peculiar and more or less accidental determinant of interest. But as a determinant of interest the specific natural person is not always isolable, as is shown by the fact that in a given case of litigation the right involved is found to inhere in a person or persons that are only remotely involved, and there are cases, in fact most cases are such, where the right can be attached to no specific natural person. It is this fact that gives the general sense of futility to legal procedure where it depends upon the individualistic assumption. Rights are then generalized references to states of fact, and inhere in situations which involve natural persons only indirectly and mediately. Rights are, then, as references to superpersonal situations, political functions.

But if these results are sound, the right is not 'social' in its origin if by social is meant primarily reference to the orders of persons in the subjective sense of their interests taken as unmediated through things. The abstract cultural and spiritual associations of persons involve no rights except insofar as such associations have ends that can be substantiated in permanent things, things which retain their status independently of the

relations which they bear to particular persons. The mere un-objectified relations of persons considered as natural and unique have not the stability and fixity which is necessary to make them describable. For this reason rights have no necessary relation to interests. A church congregation, for instance, cannot be held as a permanent organization without objectifying its interests and ends in the form of church property, ritual, etc., even if the property is limited to a collection for the missionary field. The 'material' end may of course be merely the ritual considered as the expression of purpose. But ritual in this sense is objectified in the tradition, and becomes thus detached from the subjective purpose or interest of the natural persons. The ritual is thus objective as common property, and may, usually does, become an end in itself. The end as spiritual then becomes real only when it takes a form which precipitates or crystallizes the natural persons into a body the effect of whose action through objectified instruments results in the creation of ends that are independent of specialized personal relations. Right, that is, must have a 'matter,' and the matter is outside the immediate conscious aims of persons as natural or organic, as well as outside the relations which natural persons can sustain to each other as merely 'social.' This is the ground of property and the explanation of the tremendous importance which is attached to it in life and law. As I have attempted to show elsewhere,¹ property is one of the determinants of personality, but as such it has reference beyond the natural person to the individuated institutions in which the natural person attains his ends. The attempt therefore at a 'sociological jurisprudence,' in so far at least as it involves a theory of rights, is foredoomed to failure until it learns to accept something as the principle of personality other than the natural person and his subjective or instinctive or social relations. But that is precisely what it tends to do, and the most important aspect of the 'new' jurisprudence is the emphasis which it puts upon a conception of property considered as a social function. But until jurisprudence modifies profoundly its notion of personality, this is an interpretation of 'social' relations as subjective and in terms of property, and not of property in terms of 'social' relations. Sociology, if it

¹ See the essay on "Possession and Individuality," *Philosophical Review*, XXXI, 4, p. 369f.

is to be a science, must find its principle of objectivity outside the psychology of individuals. This is a recognition that law must get beyond its old subjectivist assumption of the individual as the creator of and holder of rights of property, of the individual as the only point of inherence for ownership. And, the attempt to hold the old individualist theory of property in the face of the fact that the more significant forms of property are *as fact* held by bodies or persons or even by bodies of abstract things is responsible for the inability of the law to deal with modern industrial conditions. Right then has a social origin only when society is interpreted in terms of other than individual or group relations or interests. For this interpretation is isolationist in its tendency and thus subjective so long as social interpretation is based either upon the nature of the individual or of the group. It has already been shown that the conception of group has added nothing to the conception of individual, that group psychology is merely individual psychology written in plural terms. The subjectivism of individualism cannot be avoided by appeal to the group. Rights cannot therefore be substantiated through the concepts of sociology until those concepts have themselves been given firmer logical basis.

It is also in this sense that it is true that rights originate from the power or authority of the state, that they are created by positive law, and their incidence upon persons dependent upon the will of the state. These propositions are true in so far as they imply that the state is the *status* of institutions of fact. As such it is the ground of the opportunities to those forms of action which are calculated to result in satisfactory ends. The state is therefore that larger person which represents the principle of order which holds persons and things and actions to unified effort in the interest of large ends. It is the unity of institutions. But if it be objected that these ends are always the ends of individual persons, the reply is that they are so, but in the sense only that individual persons must be component and competent elements within the state, that a state is not an abstraction that exists apart from or over and above individuals. The ends embraced in the ideal constitution of the state then are the ends of individuals, but they are those ends as become universal. Also, the individuals of which the state is composed are not all natural persons. The conse-

quence is therefore that the state is a *state of fact* and differs from other states of fact or situations involving thought and action and things only in that it is more compendiously inclusive of detail than others and is thus more broadly universal as a principle of unity. It attains its broad universality through historical development and the establishment of tradition in connection with the growth of institutions. The idea that a state can be deliberately formed, can be the result of a specific act of will whether personal or social, or can be made to fit into the form of a ready-made constitution, is nonsense. We have already seen that the constitutional movement of the eighteenth century was a part of the rationalism and intellectualism of the time. That is, the state is an institution of precisely the same constitution as any other personality, is an entity individuated by the same principle as the natural person or any individuality within the series whose limits are the natural person and the state. The state is then incorporate history. Rights are then 'derived' from the state in the sense that they have no meaning apart from the principle of individuation which makes the state a person along with other institutions.

IV. RIGHT AS THE ACT OF A PERSON

A right then is a capacity and an opportunity for action. The discussion of rights as acts is a reference to the dynamic or processional character of fact. It is merely a restatement of the relations of persons and things which emphasizes their procedural characters, a theory of the methodology of ends. This is what rights as acts mean when they are interpreted from the point of view of the whole within which they occur, the unity of fact which is the basis of all interpretation or description. It is because of the fact that most descriptions take the constructionist point of view and try to build up acts out of simple elements that are not acts, e. g., 'motives,' 'instincts,' that much of the confusion which characterizes legal literature arises. An act is described as an exertion of energy proceeding from a unique personality and coming by impact upon a thing or another person.¹ Here an act is defined in terms of will, and then it is stated that "Any discussion on the nature of the faculty of will and the mode of its exercise would

¹Cf. Holland, *Jurisprudence*, 9th edition, New York, 1900, p. 100.

here be out of place." Similarly, Salmond¹: "As to the nature of the will and of the control exercised by it, it is not for lawyers to dispute." A thing is from this point of view a 'possible object of common or conflicting interest.'² It is there, independent and isolable from persons, and the acts of persons pass over upon the thing in such a way as to modify it as it affects another's interest. The act is one thing and the thing another, and the results of their relations are numerable. The actor and the end are thus separated and both are separated from all other persons. The act takes place therefore in the vacuum occupied only by the actor and the thing, and it is after the fact of action that modification in the thing may involve other persons by making contact with their interests. Thus person acting and thing and person concerned are set in linear relations to each other, follow each other in temporal succession and produce effects in each other as cause and effect. Actions considered thus come in the purview of the law only after their occurrence, their results, however undesirable, must be in the existence before the law can be concerned with them. Even in the case of the injunction the same analytic method seems to be followed by the courts, that is, it seems to be assumed that a specific isolable event is so imminent that it can be regarded as having occurred. The law must allow the undesirable thing to happen and then find a 'remedy'; a way of putting Humpty Dumpty together again after the great fall. But the element of truth here is the recognition that as mere act of will, as action *in vacuo*, the act has no meaning; there really is no act until the issue in the objective thing. We shall see that an act is a complicated intrapersonal relation, and is distinguishable from other relations only in representing the dynamic or propulsive capacity which inheres in things as ordered. It is in this sense that 'act' involves will, and, as the right to act, may be said to derive from the state.

But the relation of act to the thing in which it issues may be conceived in various ways. The ordinary legal language is to the effect that the act is upon the thing, that is, is directed toward the thing as exclusive of other things, and as a process comes to completion and ceases in an effect produced in the thing. But this language misinterprets the fundamental nature

¹ *Jurisprudence*, 4th edition, London, 1913, p. 323.

² Pollock, *First Book of Jurisprudence*, London, 1896.

of acts as well as things as objects. No thing as the object of action is isolable and no meaning can be given to an act directed upon a thing considered out of its contacts with other things. Such an action would be a *reaction* and this is the contradictory of an act considered as a process involving will. A thing taken as an isolated object is not complete, but is an instrument to a further thing. It is considered as severed from the whole of fact in which it finds its nature and function, and from which it gets the qualities upon a basis of which anything can be said of it, even the statement that it is separate and distinct from other things. As grounded in this whole of fact the act is dependent upon the 'will of the state.' Taking a thing therefore as isolated from its natural place in a complex of fact restricts the description that can be given to it to the bare particularist and unindividuated qualities which make it a mere abstraction. Then as the instrument toward some other thing regarded as the end of desire, a thing is partial, has no definite individuality, and takes its nature from specialized functions which are inadequate to give a real status to that of which they are functions. Then a thing in this sense, as that upon which acts come to an end, has status only as a term in an infinite process, or as a mere indefinite and quantitative detail in a whole of fact. But as a term in an infinite process a thing means only itself in repetition, as we have seen, and this is equivalent to meaninglessness. And as a detail in a larger whole, considered not as in some way representing the purposiveness of the whole, it is a mere quantitative unit derived from spatial presuppositions and as such has no practical meaning whatever. The reference to the will of the state as the ground of right acts makes something like nonsense of the ordinary juristic use of person, act, thing, etc.

But the chief difficulty in respect to things taken as isolated ends or limits to action is that in this sense they cannot be regarded as having any relation to real will, and are therefore not 'actionable.' Considered as the limit to the physical and physiological process which originates in the organism and which supposedly involves the conscious processes, a thing is not the object of will but the end or limiting term to a mere impulse. The fact is, that the difference between 'voluntary' and 'impulsive' action is primarily a difference in their overt issue. That upon which action ends is the issue of blind impul-

sive force, and indicates no conscious purpose. That is, it indicates no organization of mind with reference to directed action, but is the sheer outburst of nervous energy. Such an act is the undifferentiated and indivisible outflow of the energies considered as the stuff of which will is made, but could be called an act of will only by reference to an object which, through the order it displays, gives evidence of having been planned. And then, even, the will involved would be that implied in a previous act which planned the object. And a planned object, which in every case is the object of will, and in the absence of which there is no will, is one which shows definite organization of objects as instruments with reference to further ends which imply other elements than instruments. Action then which comes to issue upon objects is not an act of will. It is the expression of blind unintelligent impulse, and is not different in essentials from movements that are causally determined. Such acts are reactions and imply therefore in no sense the will of the state as corporate order.

A right as an act, then, when considered as issuing upon its object, implies an object that is inert and inane. In so far as other persons are involved in such acts or rights, persons are considered as material instruments in the hands of the person who acts. This is indicated clearly in the legal discussions of rights as against somebody or against all the world. A right seems to exist for the law only on the occasion of persons opposed to or pitted against each other. The possessory right is, e. g., exclusive; possession is the power, supported by legal machinery with its remedies, to prevent its object falling into the hands of any other person than its holder. It is therefore envisaged as the mere physical capacity to maintain its subject against any force arising outside him. Its tendency is therefore to isolate persons and things and to set them up as mere collections. Things from this point of view are significant only in the sense that their multiplication creates a force in the interest of the possessor greater than that at the command of other persons. It therefore implies an individuality principled by causal necessity and power, and the measure of the individual's power or the degree of his individuality is gauged by quantitative units as criteria. A 'society' of such individuals is therefore a resultant of a balance of forces, and the equilibrium can be maintained only by periodic redistributions of the

forces involved, as e. g., in war. But such a society rests upon force and power and authority, which means that its dissolution by revolution impends at every moment. It is an order principled by strife, and can maintain itself only by continuously 'restoring competition.' The mystery in such a conception is as to where the intelligence is to come from which will know when the component forces are in equilibrium, and where the will is which can make the choice involved in the distribution of power, or can carry into execution the choice when made, since the choice must be executed against the superior force. The conception is contradictory from end to end; the wonder is that it ever could have taken hold on the minds of statesmen and jurists. In our juristic theories will means disorder. A right against another person is simple nonsense; the right has ceased to exist when the authority of the court or state is called upon to guarantee it, since as a capacity and an opportunity to act in a way to fulfill desire, it has already been destroyed in the social dissolution occasioned by the disagreement and conflict of the persons involved. It is, therefore, in this case not an expression of will but as an instance of disorder it is a symptom of lack of will.

V. RIGHT AS A PRINCIPLE OF PUBLIC ORGANIZATION

The act of will exists only in the ordering of objects by intelligence toward an end selected as the fulfillment of impulses grown into purpose. The old moral conception that the will orders impulses alone is inadequate. Impulse by itself is incapable of order and is a relatively unimportant detail in the complex of fact ordered by will. Will therefore represents not the competition of elements of impulse acting against each other, but the weaving together of the impulses *and* other things, and their organization with other things of a great variety of natures into a whole in the form of an object of use or beauty. And the description of the fact as it occurs in the experience of the individual applies to the expression of will in action in social relations also. A right enacted in the social sphere implies the working together of impulses, regardless of the personal incidence of each or any of them, with other facts in the interest of an object which will fulfill these impulses regardless of the special form which the impulse may

take in any individual. That is, the act as overt, universalizes the impulses out of which it grows. Psychological facts like impulse are not private possessions of individuals in so far as they concern will, and they are unintelligible until we can get the objective view of them as constituting objects which have no specialized reference to natural individuals. And the objectified order of impulses as principled by intelligence and substantiated in fact is precisely what is meant by the individuality in the practical sense, and the definition need only to provide in its expression for differences of degree to apply to all higher individualities in social and institutional life. The man is thus equated to or 'adapted' to his environment, simply because his environment is a complication of himself, a part of his objective content as end.

Then action *upon* things and *against* persons can never be made into the stuff of right. A thing is the common object of interest and a person is a common actor with reference to the thing. A thing that is there to be acted upon is there for anyone capable of prevising ends. The idea of things as exclusive of each other in their use probably survives from a time when all things of importance were hand tools, and thus could only be used by the individual. But this has not the slightest relation to 'things' as practical under modern conditions. And the thing prevised as end by one person is previsible by any other person. The relation as a right therefore is absolute, universal, and the problem of practical science, as also of legal procedure, is to find the universal in the specific instance. "The administration of justice is the determination of what is just, and unjust."¹

In other words, what is to be worked out practically is how the right exercised by one person is compatible with a like exercise by any other. It has been shown that, taking persons and things and acts as one at a time and isolated, the problem is insoluble because irrational. It is irrational in that no concreteness of meaning can be given to it, no intelligible statement can be given the problem. The politics and law of analytic individuals is an ultimate surd. The conception is made rational through the idea of individuality as represented in its

¹ Aristotle. *Ethics*, Welldon's trans., London, 1920, p. 157. Also *Politics*, Welldon's trans., p. 7.

varying degrees. And this latter is a question of synthesis of immediate fact.

The fact is, men do not act *naturally* upon objects and against persons. They do so only in so far as they have been taught to do so by a false politics and false legal theory. But the mere force of circumstances has compelled men to live on the basis of a doctrine different from the negative one they professed to believe, and the awkwardness of their position is rapidly coming to be recognized. Fact is therefore teaching them the new law, and it may not be over-optimistic to hope that they may be persuaded to live according to the law. Men can live by the law when law is, as it should be, their natural way of life. Then what is the fact? Men act *with* each other *for* things. The difficulty is that we require that this implied co-operation should be conscious. The demonstration of the fact of co-operation is effected through an analysis of an act of will. An act of will is the incorporation of the variety of impulses, things, etc., in an object which is their completion. It is a harmony of elements which when taken singly and discordant are unaffected by the inherent rationality of their implied purpose. But impulses do not in nature necessarily interfuse with each other in the embodiment of their common urge. Acting singly, if they ever thus act, which is doubtful, they result in impact which never takes form as a product, but is only related in infinite process. As fused in a thing, which is their natural form, they create a new entity in the recreation of their form. It is a genuine reproduction—a production over again of the novel—the reassertion of the universal. It is therefore the recreation of ever new stages of life-content, the reproduction of ever new forms of self, not as the repetition of infinite process but as production in infinite progress. But as such they are no longer impulses, but will. The fact of will is then, the harmonizing of partial elements into a whole. And this describes the will in its general aspects as well as in its specific instances. It therefore describes will in the natural person as well as in the social or institutional person.

Men act with each other, then, for common ends, and it is only this compresent type of action which constitutes an act of will. For the unification of the energies of different natural persons involves no facts which are not present in the “making-up” of the mind to action in the individual. The term will

then applies indifferently to acts of single natural persons or to acts of bodies of them or to bodies of persons and things acting together. When a man acts alone he is acting blindly, from the pure inner urge of impulse undirected by ends. His action is 'selfish.' Every act, however, has a generalized reference just as much as have the disinterested acts of the poet or artist. They assume a common appreciation. Man never really acts alone. He has only been taught to think that he does, and it is the perverted thought that is responsible for the failure of his action. That is, his action fails because will directs it toward common ends, while he conceives his action as directed to specialized ends. And the result of subjective purpose is thwarted will and futility. The most unfortunate result of attempted isolated action is that intelligence is divorced from action, and is directed in purely theoretical interests in one direction while will proceeds in another. The will in the individual is itself objective and universal, and since it attains by indirection, as we saw, ends beyond the individual's intelligence to foresee, we can speak of will as being dominated by universal intelligence. This objective and universal aspect of will and intelligence is perhaps the will of history instituted as tradition, and it is objectification in tradition and other forms of institution which gives effectiveness to the general will. It is thus that real status attaches to institutions as individualities of higher degree than natural persons. The more or less unconscious harmony of human action which is directed toward common ends is the active force of human institutions and the organized real will of peoples. Institutions have a creative and expansive tendency which is the higher expression of what in its lower forms we have called growth-force, and this tendency is responsible not only for the maintenance of a stabilized form of civilization but also for such progress as civilization makes. In so far as institutions represent the appropriate ends of human but not 'individual' wants the growth is healthy and undisturbed. As they represent inappropriate and specialized ends the growth is stunted or misdirected. The problem of direction is the special problem of intelligence and goes under the name of the 'problem of control.' But control carries no suggestion of authority, the least meaningful of political conceptions. The problem of control is complicated, and the difficulty is specifi-

cally how to 'get a start' since, as we have seen, the mind becomes institutionalized by adaptation to a more or less stable environment and there seems thus to be no 'free' mind to which other facts may be referred. But, for better or for worse, modern life is the life of institutions, of institutions with a material basis, and hence the object of all social or political inquiry is as to the nature and function of institutions. For this latter problem, the first prerequisite is for analysis and investigation of fact. The unit of fact for institutional life is the corporate association.

VI. THE CORPORATE WILL AS A LEGAL CONCEPT

Thus do the elementary practical facts drive us to a conception of institutionalized order as the ground of individuality, and also suggest the principle by which individualities are distinguished from each other in the practical sphere.

It is not the purpose to go into the details of the question of the nature of juristic or 'fictitious' personality. It is often, perhaps ordinarily, avoided by legal writers as of no particular consequence, since the facts in the case are the same whatever be our theory.¹ And it is the facts we want to insist on here, only we shall emphasize the reality of certain facts which perhaps are not generally recognized, and these, we shall attempt to show, are of equal importance with those that are recognized. A corporation is a group of persons, or a group or synthesis of objects of various sorts.² As a group of persons, it has a status of factual characteristics which is different only in detail from the collocation of facts with which we have connected the will of the individual. The will of the individual, as the dynamic unity of its nature, is, as we have seen, a certain order and collocation of facts which as a unity possesses distinct active characters different from those of parts acting alone. These facts are impersonal and non-individual in the sense that they are peculiar to no specific organization, that is, they are the universal or type-facts which specify (make into species) the particular existence in connection with which they are found. But the same fact-order belongs to other things than natural men, and as belonging to other forms of exis-

¹ Gray, *The Nature and Sources of the Law*, p. 53.

² Dicey, *Law and Public Opinion in England*, London, 1920, p. 154.

tence, individuates their existential forms into systems of higher or more comprehensive organization. We shall see that the order which individuates is often present among objects which, taken by themselves, are inert, and we shall see reasons for attributing to such orders of inert fact a genuine will. Wherever, then, there is to be found a fact-order of a given form there is individuality.¹ This individuality viewed as active is will. And this fact-order is found in connection with other existences than men, though not necessarily, but usually, in situations where men are parts or details. Will is therefore not a private possession of man. Hence a collocation of objects which, taken separately, are inanimate, but which shows certain characteristic qualities and relations, is a system of a specific sort which corresponds to the definition of individuality. Then a corporation as an order, it may be, of impersonal fact, as, e. g., a mass of property² which has come to function in given ways, is an individuality. These statements indicate in advance some of the conclusions at which we shall arrive. But it must be kept in mind that it is not the merely being a group that constitutes individuality any more than merely being an organism constitutes a man. There is a fact-system which has a specific or species-forming character as the principle of individuality; and it is asserted that this fact-system is characteristic of a number of varying forms.

The special difficulty of the question as to the nature of corporate individuality is due in a large way to the assumption that what is not single is plural. In the case of human relations this has taken the form of assuming that what is not a character of a natural person taken singly can only be, in so far as it is a human character, a character of a collective mass of natural persons. The logical correlate of singularity or unique particularity is not plurality; that is mere repetition of singularity and carries no new detail of quality however far the repetitive process is carried. Plurality has therefore a merely numerical relation to things, has reference only to their places in a linear series, and does not therefore specify things with respect to real differences. As a character of individual-

¹ Bosanquet, *Principle of Individuality and Value*, p. 285. "Legal personality represents the social machinery, the mechanism of definite co-operation."

² Holland, *Jurisprudence*, pp. 88, 91. Salmond, *Jurisprudence*, p. 281. R. Saleilles, *De la Personnalité Juridique*, Paris, 1922, p. 597,

ity, plurality is purely formal. But the real logical correlate of singularity is unity, and this involves or may involve differences of all kinds, including that of number. But number becomes in this sense a formal relation. Then plurality, as indefinite number, has meaning only in connection with abstract form and has no peculiar relation with the systematic order which determines individuality further than that numerical aspects will be determined by functions involved in its unity. Then the discussion of human relationships in terms of groups as collectivities soon meets with limitations beyond which it cannot go. A body of persons organized with respect to a purpose, or even organized by 'accident' with respect to a possible function, is not a mere collection, or a 'group,' and its description as such is inconsequential so far as practical relations are concerned. It is a question whether a number of persons can come together in however chance a way without assuming some degree of corporate form representing a degree of purpose.

The artificiality attributed to juristic persons is a result of regarding these formal numerical characters as real, and has infected much of the thought about them with the fallacy that there is no volitional effectiveness in the *fact* of order. A characteristic statement from Pollock will show what I mean. "Groups," he says,¹ "permanent or temporary, behave as individuals. There arise in this manner collective capacities and responsibilities which the law personifies for convenience." But if groups *behave* as individuals,² why should their capacities and responsibilities not be attributed to what their behavior indicates them to be? An organism that does not behave as a man can be called a man only in a very restricted sense. Man, then, even, is a practical concept. And why should not the facts that are responsible for the convenience which induces the law to personify them be taken as indicating the principle which individuates them? As Pollock goes on to say, it is not a matter of *mere* convenience. Clearly, the difficulty for the legal mind is due to the old assumption that the 'natural' person is the subject of all acts, and that nothing else in

¹ *First Book of Jurisprudence*, London, 1896, pp. 108-9.

² "A person, then, may be defined, for the purposes of the law, as any being to whom the law attributes a capability of interests and therefore of rights, of acts and therefore of duties." Salmond, *Jurisprudence*, p. 273.

the universe can act. This Pollock expressly denies (p. 109). One suspects the animism of popular thought here surviving as the primitive theory of substance. This identifies will with the organism and is subject to the criticism to which the organism as a practical concept has been subjected. But there is a further weakness involved in the assumption that the act is separable from the agent who acts, and that behavior can be understood after abstracting it from its inherence in things and persons. Acts of corporate bodies then are regarded as personal, in the sense that they issue from a natural person, even though in many cases no natural person can be found to whom the act may be imputed. Otherwise there would be no reason for personifying collective capacities, for, once we recognize that an order of capacities or capabilities objectively grounded is all that in fact can be discovered in the nature of individuality, there would be no need for the fiction of personification. No difference of primary quality of content is discoverable in individuality in any of its stages, and the ascription of any peculiar quality to it in a particular stage loses itself in the mystery of uniqueness. The fact is that ordered bodies of natural persons behave as individuals, and the structure and capacities which lie behind this behavior constitute the body in a given case a purposive system through a content which is outside itself, and this fact is a statement of the principle of individuation. The difference between an individuality thus defined and one represented by a natural person is not sufficient to justify the confusion that is made in trying to distinguish them.

And it is this principle that is important, a principle which has a practical nature in that it is derived from the facts of action, and is good theory in that it purports to organize not only action in practical life but also thought about that life. The principle states that there are characteristic fact-orders, and that these orders constitute what we call individuals; it states further that individuals by the same principle are constituted into a series of higher orders, or, better, that they form mutual systems, systems which share in a common content. With reference to this content, an individual is a system whose content is outside its form, is that *into* which the system by virtue of the law of its nature grows. It is the recognition of this objective and mutual character of individuals which

has made the thought of Maitland so significant. His statement of the dynamic aspects of the principle describes the facts fully. "For, when all is said, there seems to be a genus of which State and Corporation are species. They seem to be permanently organized groups of men; they seem to be group units; we seem to attribute acts and intents, rights and wrongs to these groups, to these units. Let it be allowed that the state is a highly peculiar group-unit; still it may be asked whether we ourselves are not the slaves of a jurist's theory and a little behind the age of Darwin if between the State and all other groups we fix an immeasurable gulf and ask ourselves no question about the origin of species."¹ The fundamental conception here is that of a system of individualities which differ only in degree and which are principled by the same type of order throughout. As a lawyer, Maitland seems primarily interested in the distinctively human or personal forms of order, or those which we ordinarily call social orders, but the implication of the same order within the system of the individual as an organic unit is clear. The 'origin of species' is then within the system of mutually interpersonated orders within which parts function as individuals. These parts are individuated, and are not mere structural or formal supports of the body of which they form numerically distinguishable elements. They are individuated in the sense that within themselves they are organized with reference to the function which as a whole they perform, as well as with reference to the function performed by the whole to which they belong, and as performing this function are integrated as a structural element within this larger whole. Taken as wholes, they are what they are because of the point of issue of their functions being outside themselves, centered in the whole of which they are parts. And it is this objectivity of reference of content which is the principle of individuality; an individual is a system which with reference to itself is complete as a mere existential whole, but whose content lies outside the confines of its completeness in that which it intends. And an individual is the only thing of which such can be said; that is, individuality, but not the individual, is unique. And the fact that externality in this connection is interpretable in terms of quality and function

¹ Introduction to Girke, *Political Theories of the Middle Age*, Cambridge, 1913, p. ix.

or ideal reference rather than in terms of quantity and space gives the individuality a will in terms of capacity to stand definitely for the interests of specific ends. This implies of course degrees of consciousness and will, and gradation of these degrees with their appropriate degrees of structural order.

Then a body of persons who by nature or by reflection and decision come to act as a unit creates a will which was not there before, and a will which has its own status in that it comes to definition in a sense independently of the wills of the individuals who make up the body. For, let the individuals meet to discuss a difficult matter of policy, and they will all disagree. But the fact that each of them recognizes the existence of a possible policy indicates that he recognizes, unconsciously, it may be, the existence of a will to which all should defer. The will of each, after the deliberation has reached and formed a decision of the whole committee, if allowed to go its own way, would or might aim at a quite different object from that of the whole. This is the reason that a decision by a large conference 'satisfies nobody.' No particular will gets precisely the objective result it wanted, and yet it recognizes the superior weight and authority of the will of the whole in that such aspects of itself as are realizable at all are realizable only within and along with the realization of the higher will. The will of this larger group is definable in precisely the same terms as is that of the individual, and its differences from the individual will are statable in terms of comprehensiveness of detail and the degree of organization which it manifests. The 'social' will then is real in the same sense as the personal will, and the fact that it has been confused with large massive bodies of feeling in mere aggregates of persons, which is not will at all but blind impulse, is responsible for the unpopularity of the theory of the 'general' will. Will is made of different stuff when considered with reference to its object, even though it may in subjective content be primarily feeling and impulse.

Maitland's conception then, and that of the 'historical school' of jurists is, so far as theory of personality goes, simply the result of the application of the theory of evolution to the facts of life. The theory of law has therefore in the wide comprehensiveness lately given it the most immediate contact with

the facts upon which a rational theory of society can be based, since it is dealing directly with moral ultimates. But it is to be understood that the sense of evolution is not represented primarily in the series of temporal events, consequently social theory is not a descriptive science. So far as time and space are concerned the theory of evolution refers simply to increase or decrease in the numerical aspects of events, or, in so far as it suggests order, to the abstract order of position, and is limited to the mere repetition of events in series. It is a question of distribution of units on the principle of distinction, a matter of the lay-out of events in abstract external relations. But the theory of evolution refers not to the distribution of events but to their mutual complication in unities rather than as units. And whereas the only idea of process that can apply to evolution of events in time-space is that of recurrence in series and reproduction of units by multiplication, the process as implicated in growth relations involves the mutual complication not of units but of objects with each other in the relation of means to ends. Evolution involves time and space *and* history. And as objects, events are never distinct in quality and function, but are objectified through the fact of their content being common or public. Content is therefore a question of universals, a matter of principle, and independent of the specific time and space forms in which it appears. An object then becomes another object by the change through which the principle allocates to it content, and this content may at the same time and in the same space be content also for an indefinite number of other objects. It is then itself as means principled by reference to itself an end. It is what it was temporally and spatially, but with a content outside itself in the public domain of common meaning. It bears its end (as public content) in itself (as space and time). The natural person is then an organism (space and time and process) and, as an organism, is an organization of content which is equally the content of its 'other.' Thus the distinction and separateness of persons is overcome and the vexed question of how unique persons get together in social wholes is seen to be meaningless. But the legal fallacy that our duties and responsibility and capacities have reference to other units like ourselves taken in their singularity, is a misapprehension of what is objective and universal in the individual. The 'other' of

individuality is, to be sure, individuality, but only the same individuality in another and different degree. The real 'other' is the wholeness of universality which is incorporate in individuality in all its various degrees, or rather the real individuality is the principle of unity of individualities. And by highest degree, we mean the sum of all content of which a given individual is capable of being the incorporation, the total sphere of values with which the individual may be identified. And this sphere of values is there (objective) as the content in which all individuals share.

VII. CORPORATE WILL AS A PRACTICAL CONCEPT

Traditional moral theory has also assumed that my duties are owed to another particular person (myself, my neighbor, God) and has conceived duty as the one-to-one relation of repetition. Also, modern ethical theory is prevailingly individualistic. From this point of view conduct can be standardized, reduced to quantifiable form, and *my* duty is precisely what *any* other person should do under the given circumstances. But this is obvious nonsense. Duty is then either vicarious, which is absurd; or it is the universal of action which incorporates the individual with his species and thus renders duty a common end. But considering duty as vicarious or transferable neglects the uniqueness of individuality, the fact that, while my values are of the same content as any other person's, they represent an end as a different ordering of means from any other person's. Our 'ultimate' duties are of course the same, are ended in the full stage of growth possible to us; but this is merely the statement of principle which implies the consciousness that conduct has a constitutional reference to the total organism of which all men are organs. Duty is then the universal of morality. The state as a moral agent is the ultimate corporation, just as the corporate body of an institution is the ultimate legal unit, the person. And corporation is used here throughout in its original sense, as the formed body of a purpose expressed as will, as the ordered embodiment of a content which is general and mutual and sharable in spite of the myriad shapes which it may take practically.

The outstanding stages in the compendious whole of individuality are man, the incorporate institution, and the state. And

the progressional or growth character of their relations to each other is indicated by the organism at the lower end as the form which is just approaching 'personality,' and the vague and nebulous 'world-state' or 'humanity' or 'kingdom of God' to which the process approaches as the as yet only partially incorporate form. But each stage is fully incorporate with reference to the next lower; and each higher stands as the undefined or unembodied goal or end for all preceding stages. The question which of a number of institutions is the higher form, which should be regarded as end with reference to others considered as means, is a very difficult practical problem, as is indicated in the conflicts which arise between, say, the interest in public health and the property interest.

After reflection upon the tendency of individual minds to become institutionalized in the public instruments which express their purposes, it is not difficult to understand the vast extent to which corporation building has gone within recent years. It is the recognition that a purpose, although ordinarily taking its inception in the natural person as a low stage of individuality, can get its appropriate fulfillment or reach its end only in and through co-operative effort with other individual purposes, and that in order to objectify itself it must accept a functional place within a public institution. It is no objection to the theory to say that corporations are mostly bad, organized instruments which tend to serve mere private ends in exclusive ways. A corporation, which is invariably a public instrument, trying to accomplish strictly private purposes, is merely demonstrating its own contradictoriness. This assumes, of course, that the function of the corporation is determined by its objective content considered as end rather than by its subjective 'purpose.' It is not the corporation that is bad, but the use of it for private ends. As a consequence men have come to think less of the value of the ends for which they through corporate agencies strive and more of the machinery through which these ends are to be reached, and since the technical interest invariably becomes subjective, the motive invariably becomes 'selfish.' The technological mind is a phase of the institutionalized mind. It is a very simple observation that the mind of any man is shaped and fashioned to the tools which he habitually uses. And if the tools he uses satisfy enough of his aspirations to effect a measure of

balance in his life, the use of these tools in the same habitual way throughout will be the history of his life. This is the danger which is inherent in the very perfection of our institutional machinery; the machinery is adequate to the satisfaction of by far the larger majority of existing human wants; consequently, instead of the mind's fashioning its instruments with respect to its ends, the system of instruments because of its mere satisfactoriness fashions the mind to mere process which has no end. The ostensible purpose of the system of institutions seems to be the idea of a mind adapted perfectly to its environment. But the whole theory of adaptation is looked at from the wrong end. What is in fact adapted is the mind to the environment, while it is the very life and function of mind to appropriate and adapt its environment to its own purposes. Thus, as a political instance, respect of and obedience to the law has come to mean the standardizing of the mind to the law as a fixed form, while it should mean the progressive adjustment of law to the changing purposes of men. The tendency has been therefore in the direction of embodiment of life in corporate instruments which represent the mechanized organic functions rather than the free objects of the intelligence, with the result that our institutions are dehumanized of will and purpose and maintain their process because of the mere inertia of fixed habit. Intelligence itself has come to be identified with mere quickness of response, and the end of intelligence is assumed to be reached in technique. Notwithstanding all this, it is no objection to our conception of institutionalized mind even if we grant that all institutions are inadequate to their purposes, or even that they serve wrong or bad purposes. It means merely that institutions of control, which are constituted with reference to larger purposes, have as yet not the directness and immediacy of appeal attained by technological institutions, which serve lesser and narrower and more private ends. But this directness of appeal itself indicates the lower ends served by technical institutions. And the technological mind which is the complement of and perhaps the result of interest in mere technique, is a variant of the institutionalized mind. It is of course serious, as a practical situation, when instruments of control like that of education, come under the dominance of technicians and thus lose sight of their real ends. But it does not mean that these

institutions do not have their appropriate organization. The salvation of education lies in its rescue from the 'experts' by the common sense of those whose welfare constitutes the end of education, that is, in its being more fully consecrated as a *public* institution.

And this is saying that in practical life we have reversed the relation of means and end, and have prostituted the truth that means are ends to the fallacy that ends are only means. The positive direction of corporate activity is therefore not toward an objective content of mutual or sharable values, the function which alone is appropriate to its constitution, but toward a system of technical tools the possession and use of which satisfies nobody in the end, since such possession and use have no end. The consequence is that universal strife and ill will (which is absence of will) and the disorder (which is order of a bad or wrong kind, order wrongly principled) which we call industry. Such a state of affairs could only issue when attempts are made to think the human practical situation in terms of individuals, and when the attempt is made to provide for its correction through negative instruments of reform. And the best illustration of this is the type of machinery which is being piled up under the titles of corporation law and administrative law, and the procedural instruments like the injunction which are being used to execute the law. No more striking instances of the futility of restrictive and negative attempts to create order can be found than such instruments as these, and the lengths to which the injunction is carried is a confession by the courts of the inadequacy of the substance of the law and of the unimaginativeness of the judge and his ability to make up in discretion in application of law what is wanting in its substance.

VIII. CORPORATE WILL AS A PSYCHOLOGICAL CONCEPT

The question then of the nature of corporate personality is a question of the constitution of will, and the constitution of will is a question of the institution of life, using institution to represent the overt and objective forms of objects into which life incorporates itself. The unit of principle for institution is then the incorporate form. The specific objects in which mind is expressed is the content of institution. But if mind as institu-

tionalized is perverted, as it seems to be, in institutions that are not ends, what is the remedy? It is useless, while civilization has a form which is more or less stabilized and permanent, and while stability is a necessity to the continuity of civilization, to object to the institutionalizing process. The facts of habit and custom together with the things they imply are the body of human life, and they determine to a large extent the permanent modes through which mind is to express itself. Thus institution as the principle of mind objectified is the constitutional law of mind. It is true that in a sense habit is the end in which mind always tends to issue, as psychology in the reflex-arc theory has demonstrated. But habit is only a tentative and proximate end of action, and in this sense it can be said to be a means only, itself a stage of action which presupposes a further stage. Habit is then an incomplete act, rather than a completed act, and, since it is never completed, is infinite process. It is an act which has become congealed into fixity upon its first contact with satisfactoriness, and will remain incomplete and repeated to infinity until carried on to a real end. Habit is thus a stage in a process which never ends unless it develops into what is not habit. It is a more or less fixed pulsation of movement in mere process and as such maintains itself by repetition indefinitely. But we have seen that life dominated by habit process shows none of the characters of growth as is clear from the impasse into which the theory of imitation leads. Dewey's attempt¹ to vivify habit by making it a means-end process and by identifying means with end is subject to the same criticism. Habit as such possesses no executive or propulsive power, but derives the show of power from elements necessary to the formation of habit, but are not themselves habit. At least so long as habit refers to the permanency of order in action, the reference to habit as exercising control over action has only a remote value. It is a neat way of saying that, given fixed habit, certain predictable results will follow. But it is not common to speak of cause as controlling its effect, but merely preceding it invariably. That is, cause as the producer of an effect, like habit as controlling an act, is a reference to the uniformity of fact or an assumption as to the metaphysical nature of things, and an

¹ *Human Nature and Conduct*, New York, 1922, p. 34f.

assumption very closely akin to that of magic in the notion of efficient causation. And it confuses matters to endow habit with propulsive energy without at the same time distinguishing it very carefully from impulse and thought, the two elements which are ordinarily regarded as the sole seats of executive power implied in control of action. Impulse furnishes the indefinite urge to action, and imagination (thought), direction of the act; imagination determines in advance the point in the objective sphere where the act is to issue, otherwise impulse issues in mere movement.¹ Imagination is therefore the ends-forming function, and this finally is what is meant by control. And while this is artificially separating functions which never exist by themselves, just as habit as pure routine never exists by itself, yet the distinction is necessary in order to avoid referring a more or less completely rational situation like that involved in control to the simple abstraction like habit regarded as pure routine. The executive trait therefore implies impulse *and* imagination as the substance of action, while habit as commonly used refers to the stability of mere process. And this stability of movement is attained through the inertia of the organization, which asserts itself when imagination is directed to other ends. Habit is executive then in the sense that routine can always be broken up by imagination; but the reference to habit in this way implies that executiveness is a passive trait, a capacity merely to be acted upon, the materiality of movement which is presupposed in action but is not of the essence of action. It is then not habit properly so called which is responsible for the redirection of action, but the imagination which always acts in connection with habit and makes of it a material condition to action when intelligent or human.

Then institutions as the ground of action are not mere precipitated habits, modes of action hardened into fixity by the accident of repetition. They are this, abstractly considered, but the precision with which an institution is appropriated to its function is not and cannot be due to the operation of routine. A habit maintains itself by discontinuous repetition; an institution lives by continuous reproduction, i. e., by continuous adaptation of its law to the quality of the material

¹ Aristotle's distinction of action from movement is fundamental here. *Ethics*, Welldon's trans., Bk. X, Chaps. III and IV.

object which becomes its body. Then it is precisely when and because institutions have become habituated to a function which is reduced to repetitive process that they are inappropriate to the ends of life, that they become 'bad' and destroy themselves. The Parthenon is not an institution, except perhaps of an esthetic sort, since it is now the instrument of no active human function. It retains a value of an esthetic sort perhaps because it has become so separated from its original function that its present inertia does not interfere with that function being performed by another instrument. Similarly, contract and property as used in the legal sense are not institutions properly so called, because they are the outworn instruments of purpose that has been superseded, and as such hinder the integration of social relations into the higher forms of order in the one case, and prevent the flow of material goods to the point where they become ends in the other. The real institutions in these cases then are the original superior types of social individuality which the common legal idea of contract no longer represents, and the system of ideas for the distribution of physical means to the series of corporate life-forms which the property system of the present prevents.

IX. INSTITUTION AS CORPORATE WILL

Institutions grow; they are natural; they reproduce themselves continuously by the reappropriation of themselves as orders of objects to human functions. As such, institutions are persons. They are then not the precipitate of habit and imitation but the realized or objectified idea. They are the outer form in which individuated purpose expresses itself, and as the purpose is continuously redefined as stages of its growth are attained, so is the institution, so long as it lives, continuously reformed and readapted to the purpose. When the process of reformation ceases it indicates either that the purpose has been abandoned, or that the rebuilding process has not kept pace with the change in the growing purpose. Our inadequate industrial institutions do not then represent 'a perverted public mind' as is so often asserted by way of an excuse for their perpetuation, so much as they stand as the embodiment of a stage of purpose which is superseded and consequently have become an impediment to the real purpose.

And the cure for the situation is not to be found in prayer for a change of heart among men, or the education of the collective mind, nor any of the classical methods of sorcery applied to the metaphysically unique will of man. The situation can be met only by an intelligent adaptation of institutional forms to the requirements of human purpose and not by the attempted adaptation of mind to its 'environment.' This point is emphasized in the chapters on Property and Contract. Nor is it possible to accomplish any results of importance by approaching institutions singly or as isolated from their connection with the system of means as a whole which makes up the condition and the opportunity of life. The proper method of adapting functions to the ends they are supposed to reach is through the modification of the instruments through which the functions work. Just as there is no means of effecting changes in the mind of the individual person except through changes in the external and objective forms which his mind takes in property, etc., so there is no way of modifying the public mind or the mind of corporate unities except by changes effected in institutions which express the purposes of public mind. The corporate body, and this is not necessarily limited to the legally incorporate body, is an individuality principled by the same law as the natural person and the state, and as such requires treatment in precisely the same terms as the natural man. The corporate body has a will of its own; it acts on its own responsibility; it has ends that are ends for nobody or nothing but itself; it has a mind in the order of fact represented by the will in action toward ends; this mind, like other minds, is approachable only through its objects, or the objects which give substance to it; it has all the juridical capacities and liabilities of a natural person, whether recognized by the law as 'lawful' or not; the 'legal' or juridical is what the law must recognize, not what it by custom does recognize. It possesses the biological functions of nutrition, reproduction, etc., like the natural person; it therefore has a social, legal, political, and moral status precisely coördinate with those of the natural person, and is to be considered in every way a reality of the same order, principled by the same law, differing from the natural person only in degree. The most monstrous fiction of the law is the theory of legal fictions.

But legal theory is coming to recognize, in its descriptions

of fact if not in its statements of theory, the truth of the doctrine of the real personality of corporations. So Holdsworth: "The idea that the corporation is to be treated as far as possible like a natural man is the only theory about the personality of corporations that the common law has ever possessed."¹ The idea of fictitious personality could be taken seriously only because of an inadequate interpretation of certain facts, interpretations which after all did not get their form from a knowledge of the facts but from traditional theories about the facts. It was of course impossible that lawyers, at the time of the development of modern corporations and the early necessity of adopting some practicable method of dealing with them, should possess the necessary knowledge of psychology to work out an adequate theory of will. Consequently it was necessary to make a practical assumption of the nature of will in the personality in order that ordinary juridical relations could be adjusted to the ends of peace and order. And in ignorance of the facts and in the interest of specific solutions where wills were involved, it was necessary to treat corporations *as if* they had such wills, that is, the assimilation to persons was a practical necessity of whatever theory the common law should adopt. But with no adequate knowledge of the nature of will the nature of the corporation seemed very unlike that of the natural person, so the assimilation of the two seemed merely gratuitous and the 'as if' fictitious. As knowledge advanced and the detail of facts in connection with will got worked out, it appeared that every detail of the personal will had its duplicate in the will of the corporate body. The two wills are therefore of the same kind and differ only in degree. But the significance of this result was not seen perhaps because of the prevailing political assumptions, and the corporate will got interpreted as the "general will" or the 'collective will.' What was not understood was that all will is 'general,' that is, universal, and its nature is best expressed as the principle of individuality in its varying degrees. Also the development of the knowledge of biology made the system of objective instruments of will stand out as an organization whose principle is the division of labor (an idea better expressed as the distribution of

¹ Holdsworth, *Yale Law Journal*, XXXI, 4, p. 406. Cf. Also Morawetz, *Private Corporations*, Ed. 2, Vol. I, Sections 1, 227-232.

function). From this it appeared that the 'individual person' is a complex 'society' of organs each of which is in a measure capable of independent action, and this gave tremendous impetus to the 'organic' theory of society. But the main result is that the 'unique' person was found to be a complex system of relatively independent parts, as has been fairly well demonstrated in the 'mental' or subjective sphere by the facts of dissociation of personality in pathological cases; a statement that is true in every detail of the corporate body of persons. In short it began to appear that whatever is true of the natural person is true in the same sense (but perhaps in varying degree) of the corporate person. Then the "idea that the corporation is to be treated as far as possible like a natural man" became the only theory about the personality of corporations that the common law, as the crystallized good sense of the common mind, could possess. The fault of the organic theory of society is that it always regarded itself as a fiction based on an analogy, so that there was nothing for it to do but take biological statement literally.

It is of course true that there are very serious difficulties in this point of view. Theoretical problems of the meaning of moral and legal responsibility of corporations, and practical problems with respect to the origin, organization and dissolution of corporations arise on every hand. The questions of organization and dissolution are questions of the detail of the law; but it seems clear that in these matters also the principles involved will rest upon the analogy between the natural person and the corporate person just as they do for common sense and the common law. The question of adapting modes of correction and punishment to the peculiar degree of personality possessed by corporations seems to be the most difficult of legislative problems; but this difficulty will be met when it is seen that traditional modes of correction and punishment of the natural man, upon which the corrective aspects of corporation law seem to rest, have been unfruitful of significant results precisely because they have proceeded on the assumption of a false theory of will in the natural person. And this is true even of our most advanced ideas about the education and reclamation of criminals. Traditional ideas of the nature of the individual will still dominate educational theory, and even in those points where such ideas have given way they have

been superseded by ideas based on the separatist fallacy of individual uniqueness as shown in the extreme development of technique. The old doctrine of uniqueness in substance is giving way to new doctrine of uniqueness of function, and instead of regarding the individual as an isolated entity we now regard him as a specialized technical functional instrument. Consequently we have apotheosized 'society' as a fictitious entity and looked upon the individual as a mere specialized unit of a social function. The individual is then regarded as an aspect or instance, unreal in itself, of the 'social,' which is the sum of reality; whereas the truth is that the social is a functional aspect of individuality. By this is meant that the fundamental fact is individuality, and that the 'social' merely indicates relations of degree among the instances of individuality when considered distributively, as is sometimes necessary for practical purposes. The one-to-one relation into which individuals are put by legal, political and moral thought is then a device of convenience for the handling of specific cases, but it represents no real characters of individuals. It rather misrepresents their real characters, hence the inadequacy of political, ethical, and legal methods. It is once more a case where our technique is confused with the substance for the explanation of which the technique is created as a procedural necessity. But such a technique is itself useful only after an assumption is made with respect to the nature of the substance, and if the assumption is found to be unjustifiable by the facts the technique is to be abandoned or reconstructed. And the assumption in the case of personality is false to the facts; so the technique is misleading and calls for thorough-going reorganization. The reconstruction called for in political and legal thought is a reconstruction in method, as well as in substance, and the criterion of the process is the stability of fact in spite of the fluidity of the processes through which facts are known.

The doctrine of artificiality of corporate individuality has had thus a very significant result. The root of the idea seems to be that as artificial the corporation can be controlled in the interest of public policy to a degree to which the natural 'person' could not be controlled. It is perhaps through the corporation that we have learned that all rights are alienable, since the corporation as the creature of the law is subject

to the law's power of life and death. But the alienability of rights is not incompatible with the doctrine that all forms of 'person' as well as the law itself are natural. It is also through this conception of artificiality that the corporation has come to be recognized as an entity distinct from its members, and as thus distinct can be dealt with in perhaps every juridical relation as an independent individuality.¹ In the necessity to attribute responsibility to corporations that have developed mischievous practices, and in the punishment which these practices have called for, the question of who is responsible could not be avoided. And it is found practically impossible to isolate any natural person or persons who must carry the blame for wrongs done in the name of the corporate body. The master-servant and agency relations can be pushed back from the one who actually performs the wrong act until the motive for the act is found to originate in quite legitimate purposes, purposes which it is the business of the law to protect in their exercise as the real 'origin' or reason why the corporation was established. The actual agent is not the originator of the act since he is acting under higher authority. This authority in turn is subject to still higher, and so on through an almost interminable hierarchy. At last the responsibility seems to be found to reside in the desire of the stock-holders for adequate expression of the purpose to acquire profits or perform services which create the corporation under the consent of the law, and the stock-holders are not only ignorant of the existence of the practice complained of, but each of them repudiates it as repugnant to his moral conviction. To regard the stockholder as responsible here would put a tremendous burden upon the doctrine of 'liability without fault,' and while that doctrine has lately shown an increased capacity to carry burdens, it is clear that there is a point beyond which its development cannot go. Thus responsibility seems to lose all of its meaning if the theory of liability without fault, which rests upon the assumption of the primacy of public or social policy, is considered in connection with the doctrine of the 'heteronomy of ends,' or that of the 'indirection of will,' which seem equally well founded on the primacy of public policy. It will have to

¹ This is true even of the very difficult legal relation of liability; the corporation as such is punishable. Cf. Holdsworth, *Yale Law Journal*, XXXI, 4, p. 406.

give way somewhere or be interpreted in terms of the doctrine of corporate liability and this will of course involve the reconstruction of penal law. But the doctrine of liability without fault is perhaps the cumbrous means through which the law will learn to interpret personal responsibility as corporate responsibility, as must follow the recognition of the corporation as the real person. And it is at least an interesting question whether the whole doctrine of liability without fault is not itself a fiction made necessary by a false conception of personal responsibility. The moment we recognize the organic unity of the corporate individuality and the identity of nature of its will with that of the natural person the relations between liability and fault will appear in an altogether new light. Thus do the fictions point inevitably to the ultimate fact, the reality of individuality in its varying degrees. Fictions are then tentative interpretations of fact, which is the definition of an hypothesis. And hypotheses as acts of thought are realized or 'proved' in the fact to which they give a partial interpretation, just as a 'fiction' of the will becomes embodied in the object of the will-act, and they are adequate in the degrees to which they approach the real nature of fact.

But the strongest support of the idea of the individuality of corporate bodies is the fact that only through this principle is it possible to get full expression for certain human purposes. No policy, i. e., connected unity of purpose, is intelligible which does not presuppose the individuality of the whole of which the policy is the unified purpose. There is therefore no sharp distinction in kind between purposes that are 'public' and those that are 'private.' A national policy is the whole intent of a people just as a 'highest good,' to use the ethical term, is the whole intent of the individual. Such an intent will be fully conscious perhaps in neither case. The 'public' purpose and the 'private' purpose are identical, as it was the genius of the utilitarian to demonstrate in immediate objective affairs. Only the one is not the aggregate of all the particular others; they are materially identical, which means *similar*, in that all purposes imply objective means, and formally identical, which means the *same*, in principle. This is illustrated clearly in the myriad of so-called 'social' and industrial problems that are so hopelessly bungled by the lawyers and business men who ordinarily make up legislatures, who persist in interpreting

them by the rules of the traditional individualism. "It (the idea that the corporation is to be treated as far as possible like the natural man) has made it possible to develop the law as to the powers and capacities of corporations according to the needs and public policy of the day. It has been made possible to discipline them, and render them liable criminally or civilly for their wrongful acts in ways which are appropriate to the politic character of their personality."¹ The distinctions that are made necessary by the recognition of a severalty of personalities extend through all the primary legal and moral conceptions. If we maintain the idea of the fictitious nature of corporations we shall have to invent a fictitious responsibility, a fictitious property, fictitious rights, etc., that is, the fiction must be carried through to the end if accepted at all. But the interesting and instructive if the awkward thing is the application of the idea of fiction to the procedural aspect of law. Here we shall be obliged to construct so many 'as ifs' that sooner or later we shall not know when we are dealing with realities or with shadows. And a mock process is conceivable in which every aspect has substance only as supplied from the imagination. But by this time the joke will appear and it will be possible to throw off the mask of comedy and let the facts stand out as they are. That is, such a process is real just because it is a formal and symbolical representation of human relations as universal. But the simplest respect for fact will convert such a process into the driest reproduction of fact when it is regarded as the test of a principle and the legal process as merely the pantomime or dramatic representation which helps the slow imagination of sleepy judges to see in terms of sense images what they cannot see as values. A fiction in the process of the law then can be regarded in two lights: either as the attempt at illustrative clarification of issues which tend in a given case to be confused by complexity of fact, or as the attempt to set out a principle of law² which will be useful in rendering litigation unnecessary and in enabling the judge to determine the legality of an act before the act is committed. And it is in this latter point where much of the difficulty of legal application lies—the unpredictability of hu-

¹ Holdsworth, *Yale Law Journal*, XXXI, 4, p. 406.

² On the difficulty of distinguishing substance from procedure, Cf. Salmond, *Jurisprudence*, Ed. 4, p. 437ff.

man action. The difficulty comes from the mistaken assumption that it is specific acts that ought to be predictable, whereas acts as such can in no case ever be predicted. What is capable of forecast is always an end and the end as foreseeable is important simply because of the fact that the quality of the end determines certain acts as appropriate to its realization and others as not, whether the acts actually take place or not. Law determines obligatory acts, not necessary acts. The vast volume of the law not only in statute form but in the 'reports' and procedural processes is due to the attempt to provide for and give status to specific acts and to constitute precedents for all possible acts. The law tends to become a system of casuistry. And the multiplication of laws will not cease until legislators and judges learn that what they should have in mind is ends and not specific cases. This is really the only justification of the precedent—that it can be taken in a quasi-universal sense as a criterion or end, where for practical purposes the process of determination of ends logically is too slow. But as determined by ends, all law is constitutional law in the sense that it formulates general principles as the descriptive accounts of the permanent qualities of ends. This also implies that legislation should be the progressive interpretation of ends as ends are defined in universal terms in the progress of culture. Adjudication is then the application of the idea of end to specific sets of circumstances. "The administration of justice is the determination of what is just." The difficulty comes of course from the fact that, since legislation must follow upon the definition of ends in the ordinary business of life, it will of necessity trail somewhat behind the requirements of practical life, and while this difficulty can never be avoided by reference to precedent or to cases, it can be met intelligently only by accurate historical knowledge of ends, which unfortunately the lawyer rarely possesses.

Considered from the point of view of the methods through which human purposes get realization and definition, it thus appears that the reality behind purposes, whether individual or social, is some form of corporate order operating as a system of ends. Thus in judge-made law, for example, purpose issues as generalized principle from the confluence of the juridical with a complex of other institutions.

But the conditions out of which an end appears as a human

value are just those which follow upon the coming together of wills with reference to common purposes; and as these purposes embody themselves in their appropriate instruments, corporate individualities are through the processes of nature created. The law that incorporates a body of ends or purposes is then a declaratory act, and merely puts the seal of approval of the larger corporate whole upon a new organ whose function is to realize a new purpose, an element which is 'new' only in the sense that its growth has implicated a change of purpose or function. It merely recognizes a purpose newly grown up. The ultimate act then with which the law deals is the process whereby a plurality of purposive agencies or personalities 'multiply' or reproduce into a unitary instrument of a common or public function, and the process may be looked upon either as one of synthetic organization of lesser elements into a more complex, or as reproduction by fission within the larger whole. The question of origins here is trivial. The whole is there in advance in any case as an idea of an end, as 'society' is there in advance of the individual. It is vague and undefined, i. e., its cognitive characters do not stand out, but it stands there nevertheless as the urge of feeling and interest which, become propulsive, issues as an act of will. The breaking up of the end into a number of separate impulses and the identification of these with separate natural persons each of whom stands to his corresponding impulse as a specific or technical instrument is just the coming together of wills which we call consent or contract. From its overt or objective side it is organization; and as a whole of purpose embodied in its appropriate instrumentalities it is corporation. In any case it is the unit of life, whether in its physical, political, or moral aspects, which in its physical aspect appears as the aggregative process of combining external instruments into a functioning body. But in its political and moral aspects it appears clearly as the expansive emanation from within a whole of a plurality of impulses of growth-force which reach their ends by hardening down into formed instruments of a formulated purpose. The process, which is in its earlier phases definatory and explicative, becomes executive and administrative; "the administration of justice is the determination of what is just." But the point is that law, which when real and valid, is essentially constitutional, is descriptive of the structure of real purpose as a

system of ends, and is, consequently corporative, the law of the life of a whole of unity. The two processes are, for example, now going on in two of the fundamental activities of industry; in the one case the combination of lesser agencies into enormous instruments for large scale production, and in the other 'fission' of large bodies into myriad local elements to facilitate distribution, the breaking up of 'sovereignty' into administrable proportions in administrative areas, as, e. g., in the one case the U. S. Steel Corporation and in the other the chain store. On the one hand the enormous trust organization with its centripetal tendency to draw all its parts into its center of administration, and on the other the centrifugal tendency to multiple reproduction of central power in diverse units.

X. PRACTICAL PROBLEMS OF CORPORATE WILL

The vexatious question of the origin of corporation, of how corporations are formed, whether by act of law or by private initiative, is therefore settled by saying they are formed in neither way; the corporation, like the state and the individual, is natural; it has no origin. And this means it is not made at all, but grows. They come as expressions of spontaneity; not out of the power and authority of the law,¹ or from the unique initiative of the individual person, but out of original tendencies to organization within the social body. They are acts of will. They are formed as planets or men are formed, by the workings of the laws of nature. And they differ from other unities not in their supposed peculiar origin but in the mere fact that they represent a unity of a specific degree and kind of purpose. The law, except in the sense of a principle of a complex of factual conditions, does not create corporations but validates them or gives them the stamp of approval of the final end. The law, in the ultimate analysis, is the act of the corporation, the will as the formulated purposiveness of the body politic. The corporation as state therefore enacts the law by asserting or implying in its organization that a specific end is to be accomplished by a designated means.

¹ "When we speak of an artificial person as a creature of the law, we mean its legal existence, not its particular rights and capacities." Pollock, *Contract*, 2nd edition, London, 1878, p. 92.

But as such the law is merely the corporate judgment that 'nature,' under the circumstances represented in the 'evidence,' moves in a specified determinate way toward an end, an end which is defined by the formal development of appropriate means. And this mutual propulsiveness of means and end is precisely what is meant by spontaneity, the mystery involved in the nature of an act. It is this spontaneity that is the 'origin' of both the corporation and the law; to say that a corporation presupposes a ready-made law which can create it is another instance of the magic to lapse into which is easier than to think. The act of the law is assertory and simply states, like a birth notice, that a new individuality has appeared. And in order that its 'immortality' may be assured it is christened by a distinguishing title and announced to the world as a new instrument of purpose. The law does not create the corporation; *it* creates the law. No more evidence is needed than the reference to the class legislation now created by 'bad' corporations. But the fact, not the badness, is the point here.

It is equally true that individuals do not create corporations. The corporation comes as the spontaneous organization within interpersonal relations of elements designed to appropriate new instruments to new ends as the latter appear. In a small group of natural persons these relations all seem individual in their incidence in the persons; but it is clear that, operating upon the persons, is the drive of circumstances, of which the individuals are not or may not be conscious. It is the 'opening' or opportunity of fact that leads five men to organize a bank, the need created in the complex of objective processes involved in the flow of goods and money, and not some individual's or some group's 'greed' for profit. And the 'opening' or the need are nobody's creation; they are the fact that relations are displayed with reference to each other as they are. A slightly different display or lay-out of relations—the same relations—would or might have prevented the suggestion of the bank from entering the mind of any of the men concerned. The bank then appears, creates itself, arises out of conditions of which it is merely a slightly higher degree of organization. To say that the bank could not have appeared if it had not occurred to the mind of some individual is just as true, and just as abstract and meaningless as to say that the bank grew out of the needs or wants of men, the perfervid platitudes of

phrase-mongering publicists. Either statement is merely saying, when it means anything, that what was formerly a low degree of organization of a certain batch of relations is now an organization more definitely appropriated to a statable purpose, and either of them simply and succinctly designates a state of fact which is to be understood rather than celebrated. So a corporation is a status of fact; a previous or lower status of the same fact, while still showing degrees of organization, would not be called a corporation; nor would perhaps an organization of the same facts into a higher form. One particular degree of order lower in complexity than that of the ordinary corporation is the natural man, and one particular higher degree is the state. But between these are many intermediate forms.

When the law therefore treats the corporation like a natural man it is merely recognizing the corporate nature of individuality as the principle of the real. But it is doing this more or less unconsciously, and the hope is that our kings may become philosophers so that they may take up the question of corporate organization and control with the conscious assurance that they know the end and the principles through which corporate organization may be appropriated to that end. The blind dependence upon precedent, the waiting for factual orders to begin to decay before cognizance is taken of them, the postponing recognition of fact until the formative stages of fact have passed so that control is next to impossible; this has left the legislator and the judge merely rattling the dry bones of needs that have long ago been superseded, and of ends that have disappeared in their realization. What is more pathetic than a legislature spending a year constructing a protective tariff after men have begun to think in terms of international comity and of the control of industry to constructive public ends? The 'facts' which such legislators have in mind do not exist; they have disappeared in their objective and realized form long ago, if they ever existed. So that they are merely dealing with the fixed images that indicate a congealed mind, or are attempting to screen a real but illicit fact behind a prejudice. And the real but illicit fact is often the legislator's forecast of the result of the next election. But this is merely saying that the legislator is either ignorant or corrupt, and a normal optimism prescribes the former. The

hope is therefore for an intelligence in the public mind which will be able to appreciate immediate fact, which will distinguish as important those facts which carry the conditions of the future in the process which they now represent. And the ultimate immediate fact is the flow of events into centers individuated by their relations to ends outside themselves; the process of the incorporation of a purpose in the system of instruments appropriate to its realization; the embodiment of a will in the object which is its end.

Of this ultimate fact the law has made its characteristic muddle. The ends which have been in recent years achieved by the will to objectification through corporate instruments have been new and unfamiliar to the standardized legal mind. They have therefore been adjudged illicit ends, since they have not been consistent with the form or letter of the law. And since the lawyer mind knows only one method of combating illegality, he has attempted to 'negate' the corporate movement by restricting and restraining and forbidding. He has met fact and the living flow of fact with the blighting fixities of authority and sovereignty and power and force. There is, of course, no natural guaranty that all corporate endeavor will reflexly and necessarily reach moral ends, the mere urge of the corporate tendency in its lower forms at least is to ends without regard to their moral quality. But if hindered by legal restrictions the tendency as natural will pervert itself just as does a potato sprout which grows under a board. In its higher forms of conscious purpose it is indifferent as to its means. And it is unfortunate that corporation law is mainly devoted to the restriction and prevention of the efforts toward the natural ends which the corporate tendency seeks to embody and does embody as public ends when left free. One of the most pathetic situations is the fact that legislative authority must be given before bodies of people may act as individuals in co-operative business or production. They are in restraint of trade. Not only is the unfortunate result not confined to a distorted product of the tendency and a perversion of the tendency itself, but the worst result is the fact that the law itself gives evidence that it is out of touch with the processes of life, and hence at least explains, if it does not justify, a widely growing contempt for the law. It is a mere accident that most corporate activity occurs within the processes of

industry and business, and if industrial corporations are in the main vicious, which could as hypothesis, at least, be conceded, it is not because they are corporations but because they are adapted to an end which cannot be fully objectified and made general and public. That is, the fault lies with the business principle involved, and not with the tendency to corporation, with the ends that have been set up by relations of fact supported by a system of law whose spirit has long ago departed. The trouble is in the distortion and over-development of business and private property, not with the principle of corporation. The crux of the situation that confronts industry as well as legislation and the administration of the law is the fact that new and spontaneous tendencies have developed within the active life of men which find no counterpart of growth in the system of the law. And this inflexibility of fixed form, and insensibility to the urge of purpose as represented in public will, is the element of weakness and vice in both law and business. The latter is still crucified on the form of individualism, while the forces of active life presuppose principles of corporate activity. And a law adapted to the activity of unique natural persons with metaphysical and spontaneous wills is hardly adequate to deal with forms of personality so complicated as some modern societies and organizations.

XI. CONCLUDING SUGGESTIONS

What seems to be required as a consequence is a form of law more on the order of modern permissive or enabling acts, the alternative to which seems the over-development of administrative law. And if the lawyers are going to continue to oppose the multiplication of administrative agencies, as seems to be probable, they might take some responsibility for it in the fact that the law to which they adhere is not competent to meet successfully the demands which social growth are making upon it. So if they do not like administrative law they should readapt the law as it is to the facts as they are. A law that will not bend must either break or make way for one more flexible. The tendency to small unit organization with superindividuation into large practical or administrative systems is upon us and is the characteristic fact of modern life. It indicates the form of social order of the future, and our

institutions must be adapted to the new type of individuality or be discarded as outworn. Nobody would advocate the return to individual production; but then our social machinery, law, politics, ethics, economics, religion, esthetics, all must adapt themselves to large scale production by machinery and to social activity generally or pass into mellow and bodiless tradition as the playthings of fond memories. Rather we must adapt the machinery to mind and purpose. The whole matter of an individual working for wages, for ends other than those that complete and embody his own will, is an insult to the modern intelligence. It is curious that modern politicians and statesmen have not perceived the utter impossibility of maintaining a civilization in which one man *works for* another; and it is perhaps an unfortunate fact that this 'helpfulness' has left little in the idea-system of Christianity to which men can give intelligent assent. Aristotle saw clearly that the 'hired laborers' would always make trouble, and that the problem they occasion is vastly more important than that of slavery, since its moral aspects are more difficult to envisage than those of slavery.¹ This cannot be too strongly urged upon religion. If religion wishes to retain any hold upon the interests of men it must meet and adapt itself to the new fact of a changed order of life, to a life centered upon other things than those which were its objects when religious thought was formulated. It is incontrovertible that religious thought, if not ceased altogether, has lapsed behind the movement of its living object, the consociation of individuated ends. No one wishes a return to the stowaway method of saving souls one at a time to which individualistic religion was committed; that, we begin to see, was the very apotheosis of selfishness and prudery and intolerance. Nobody would care to go back to a grocery store and a saloon on each corner, even though the chain store and the blind-tiger are not exactly the ideal means to food and drink. But if we do not like these forms of corporate activity then our obligation is to direct the corporate tendency consciously and deliberately toward the ends we desire while at the same time finding such means as will not themselves create or suggest unworthy or immoral by-products. And it will be found that much of what we call evil comes as a

¹ See the *Politics*, Welldon's trans., pp. 29, 36, 45, 46, 48, 52, 54, 58, 68.

reflex and unintended result of accepted means which are inappropriate to the ends they were designed to reach. And the seriousness of the evil is the index to the degree of inappropriateness of means to ends. The problem of life is the adaptation of means to ends; the problem of thought is to find the principle of that adaptation; and the problem of control of the corporate tendency is an intellectual problem. The law is the philosophy which organizes that thought as the life-order of immediate fact.

The ordinary fiction theory of corporation is a monstrosity, an abortion of juristic thought. Perhaps it is hardly a case of thought at all, but one of the common practical substitutes for thought which are the bane of practical interests. It is a fungus growth out of the development of procedure, necessitated by the failure of jurists to direct that development consciously. There is perhaps an innate tendency in the administrative process to evade or avoid thought. Thought raises questions continuously, while it is the purpose of the practical or administrative interest to settle questions and adapt action to circumstances as they are. To adjudicate too often means to reduce a situation to felt certainty, so that it no longer troubles the mind. Consequently the procedural aspects of justice are over developed at the expense of the process of 'determination of what is just.' This means that the speculative interest in law as the regulative principle of life has not been fully developed, leaving the philosophy of law to go up in the thin air of 'metaphysic of morality.' And constitutional law, especially in its larger sense as international law, or in its sense as the constitutive principles of corporate individuation in social life generally, has lagged far behind the growth in complexity and significance of human relations. Hence war and protective tariffs and trade conflicts and national hatred. Hence also the necessity for deception and propaganda as the essence of diplomatic relations and of the 'civic education' of citizens. Hence also the utter incapacity of the legalist mind to sense large movements of social purpose, and as legislator to give constitutional principle to these movements in large-visioned law; instead, through misunderstanding, it stamps them as criminal. Hence also the bone-headedness of the appeal to force to meet the surge of corporate purpose which 'constituted authority' cannot compre-

hend. Law is declaratory of purpose as purpose is embodied in fact. It is therefore the act of interpretation through which the corporate consciousness adapts and appropriates its purpose as imagined end to sensed fact given as means. It is the object of life to embody itself in those means; it is the object of law to tell how it is best to be done, to lay down the principles by which the embodiment of life in fact is to be accomplished. It has nothing to do with relations of 'individuals.' This question of law, of determining principle, is one of finding the essence or nature of fact in its characteristic quality. And the characteristic quality of fact is change. And the problem of change, as theoretical, is to understand that change in essence is ordered growth; and as practical, to find means whereby the growth impulse may be directed to appropriate objects; how the soul of purpose may be fitted into its body of fact.

The ultimate question is then one of Fact. This we seldom appreciate in our concern with the confused multiplicity of facts. That is, it is the universality of fact, or the element which is most essentially necessary, which escapes observation. We look for the ultimate in the distant, and fail to see that the real lies at hand. The essence of fact, then, as all types of philosopher will admit, is its immediacy. The immediacy of fact as it concerns human practical interests is the human nature from which all practical considerations spring. It is likewise the source and presupposition of the theoretical process whose function it is to lay down the principles by which the practical interest is to be guided. Not a previous fact, then, is the criterion of legal thought and action, not precedent as an adjudicated isolated relation; but the fact of human nature in its corporate complexity as it lies before us. The necessity which persists, then, is for a continuous interpretation of the process of human nature.

Two fundamental aspects of human nature, the aspect of rationalized fact and the aspect of rational law, are the topics of the following chapters.

CHAPTER VIII.

PROPERTY AS THE STRUCTURE OF THE CORPORATE PERSON

It is assumed throughout this work that the corporate nature is distinctive of all forms of life, and in a low degree, of many of the artificial products of art and artizanry. The assumption is, therefore, or seems to be, the equivalent of the organic theory. But there are fundamental differences, most of which relate to the artificiality and abstractness that have come to be the content of the term organic. The corporate conception of social life differs from the prevalent organic theory primarily in its attempt to maintain the point of view of wholeness, whereas the organic seems to look at society from the point of view of the element of which society is made. Anyway, from our point of view, all life manifests the corporate form and functions, and we choose the term corporate in preference to organic because of the implication of universality which it carries, and which, while originally the meaning of organic, has been lost through the adoption of the organic theory by individualist interests. All life, then, is of the corporate form. Life is embodied order. The characteristic of the corporate form is, as has been shown (Ch. V.), that the law organic to its nature is above and beyond the distinction between internal and external. Its principle is internal and immanent in it, in the sense that it is the law of the order of its parts, but is extraneous in the sense that it is through the same principle that the corporate body is incorporated within a more expansive and inclusive whole. It is this latter fact that states the essence of meaning of universality and objectivity. In the same way, the law constitutional to a corporate body is extraneous to the parts of that body as their universal and end, but concrete and inner to the body as a whole as the principle of its integrity. The distinction of 'whole *and* parts' usually made with reference to the constitution of reals is thus misleading.

The distinction can only refer to the relations of degree among a system of wholes. These various forms or wholes themselves as degree differences assume corporate form as the unity of lower forms, and these unities incorporate in still higher forms. We have thus the conception of a scale or system of degrees in corporate forms, all of which are held within the same specific type by a principle which is at the same time the law of their nature as parts and of the system as a whole. This principle we have called the principle of individuation, since it is at once the definition of each single unity and the law of their organization into system. Since individuality is an objective principle of universality it enables us to avoid as unreal the apparent contradictions between the "individual" and the "social." The objectivity of the principle we have erected into the system of external instruments and means to the fulfillment of purposes; and purpose, as the subjectively universal, has been conceived as the system of ends which the system of means subserves, subjective in that the ends are particularized in form in advance of their public and outward realization. The fundamental distinction therefore becomes one of growth relations within the realm of objective fact, between various stages of order of the same specific factual details. This mass of material instruments to ends is what is meant by property. The principle of individuation is the expression of the *order* of life, and is therefore the distinctive character of reality. Within the system of degrees of the real or objective growth stages of fact there are classes, or groups of differentiated unities, whose characters show greater degrees of qualitative similarity than those of other groups, similarity being merely difference becoming universal, and therefore display a *type* of difference—the *distinctive* difference which is common or mutual to a number of reals. These classes may then be given distinctive characterization. In one of these large classes within the real there may be included all forms which have direct contact with the human, and this may be called the class of personalities. The criterion for the distinction of a class is the degree of unity and order it manifests as its organic or constitutional law. But within a class there are, on the principle of adequacy of organization toward individuality, higher and lower forms, varieties, if we wish to keep to the evolutionary terms. The class of personal-

ities then includes the distinctively human as a mean form, with the subpersonal below and the superpersonal above. The subpersonal consist primarily of objects which human beings use individually as instruments or material means to individual ends, while the superpersonal refers to those complex agencies which, while means to human and even individual purposes, react upon the human in such a way as fundamentally to affect the organization of natural men into social groups. The subpersonal forms consist primarily of the *machines*, i e., social, political, industrial processes and organizations principled by the strict law of causation, and devoted primarily or wholly to individualized ends—'private' ends in the individualist sense. The superpersonal agencies are the institutions of life in all their great variety, the elements which as active and effective capacities maintain the integrity of organization of the real within the multiplicity of changing quality into which the real differentiates through growth. They are all the modes of public life which involve the intimate and imminent laws which integrate natural persons into permanent corporate forms, as, e. g., the family, etc.

Of these institutions there are two which occupy peculiarly important positions in human life, and hence suggest that they have a metaphysical or constitutional implication. One of them, as the means of support and subsistence for both natural persons and social persons, indeed as the embodiment of individuality in all its forms, is property. It is the system of things used as means or instruments to all personal purposes. The other, as the principle of the use and distribution of property and the law which controls the organization of propertied or embodied persons into higher personalities, is called contract. It remains to give an account of these two principles, showing their metaphysical importance in the philosophy of corporate individuality, and to work out through a critical analysis of the forms of property and contract as they now exist a statement of what they must mean for the future. But this merely means that it is required to give them the status of universal principles for the practical sciences of politics, ethics and law. Our problem here then, as in other cases, is to find the reality of property and contract in "idea," not only in their forms recognizable in the facts of practice,

but also in the forms which current tendencies in practical fact indicate them to be progressively taking on.

I. PROPERTY AS SUBJECTIVE—OWNERSHIP

Property, we assume, is *the embodiment in external means of the personality*. And by way of making the distinction between property as a subjective right of an individualized entity and as an individuated whole of functional relations among persons and things, it can be said that external means are natural means. But in the latter sense property becomes the differentia of a form of personality, as we have already seen, and thus is distinguished from the "grossness" of matter in the sense of isolated physical things. The distinction which is important here is that between property as a subjective right and as an objectified institution of life-activities. Conceived in the latter sense the description of property is the description of the social "forces" and currents of purpose which make up the fact of human relations. And the essential thing to be made clear is that property will show a specialized form corresponding to each of the larger areas of human relations, just as these larger groups of relations in their practical intent showed us the principle of distinction among the forms of personality. The status and meaning of property in its universal form and outline have already been disclosed in our demonstration of it as the objective and external "body" of the person. Property is then the substance of life, the form in which life as essence is bodied forth.

I have shown elsewhere¹ that property, when defined with reference to its status and function in human life, has in certain cases at least, no relation to what is ordinarily called ownership. There are forms of property that are not owned at all. Further, it was shown that, if ownership refers to the type of personality to whose ends property is a means, a consideration of the juridical relations which property involves makes necessary the reference of property on the whole to the social body.² It is in this sense the objectified form of

¹ *Philosophical Review*, XXXI, 4, pp. 369-387.

² Cf. Ely, *Property and Contract in Their Relations to the Distribution of Wealth*. New York, 1922, Vol. I, Ch. 6. Also, Duguit, in *Progress of Continental Law in the 19th Century*, Boston, 1918, Ch. III, Section VI.

the mutuality of personal relations. Again, it was shown that inasmuch as many forms of property are by nature specially appropriate to the uses of human beings taken individually, what is called 'private' property has a status in the nature of things, and the principle of its relation to the other forms of property must in the interest of social harmony be worked out. We shall find that the meaning of 'private' has been misunderstood. Throughout it was assumed that the discussion of property should center upon the system of fact represented in the complex of persons and things and their relations which we call indefinitely the social life, and that these facts could be best understood when examined in the forms which they have assumed under the influences of the principles of political, ethical, and legal thought. It was believed, and the same conviction will direct our thought here, that these principles which have become constitutional to our modes of thought have objective status as the laws of life and reality, and that any motive to control of the currents of life purposes will of necessity be compelled to recognize them. That is, the science of the practical life is a fundamental logic of reality.

It is the purpose here merely to universalize and to exemplify the propositions stated above; to show what they mean when reduced to principle, and what effects the principles have when applied as practical rules to the facts of life. Stated briefly, the three may be put as the following topics: (1) the changed meaning of individual ownership in a developed civilization; (2) the transition from property considered as an exclusive appurtenance of the individual to the status of social function; (3) and the idea of 'private' property as the principle upon which are distinguished the various types of real personality or stages of individuality.

(1) It has been suggested that as social order develops in complexity the relations which subsist among its various elements tend toward increasing clearness in outline and fullness of formulation. But the increasing clearness is merely the subjective evidence that the relations are attaining objective status, that they are coming to approach a more or less adequate logical inner consistency of order as a system of *known* reality. Relations thus become the detail out of which as the principle of their unity scientific and logical laws are inferred, and the inference follows often as a sort of necessity from the

directions which the movements of facts indicate. It is for this reason that the discovery of as yet unrealized tendencies becomes important, for in this stage they represent the truth as a 'cold' and disinterested logical norm or indication of direction which has not become barnacled over with specialized properties in the form of interests. They are as such purely objective, have no peculiar significance or meaning which comes from consideration of their specialized or individualized references. They are the purely speculative judgments which are objectified through their abstract universality, and are subjectively true without special reference. They therefore make the general basis of principles as speculative hypotheses, and are true in a sense in which no individualized judgment can be true. The traditional conception of the individual is just such an abstract speculative conception, and it is more or less an accident that its terms correspond to biological fact. The conception is useful therefore in the purely speculative interests of economic theory, but breaks down at once directly it is applied to the problems of concrete life as in ethics and law. But such principles can never become norms except as principles of direction for further abstract thought. It is only as social relations become fully *formulated* as institutions that their cognitive counterparts may serve as dependable rules for the guidance of action. A 'rule of action' is a description of such objective instruments as will end or conclude a normal purpose. And these rules become fully formulated and operative in practical life as expressions of corporate will often before their value as speculative truths are recognized, although their use can of course never be quite adequate until reduced to speculative consistency with the law of practical life.

Social relations thus as the fluent and nebulous stuff of life precipitate in two forms. In the one case there result the pure forms of speculative consistency represented in the systems of logic and speculative science, crystallized with absolute precision of outline but with homogeneity as content in the abstract universality which they express. It is this abstract universality that the traditional idea of individuality expresses. Hence its relation to property will be that of abstract container or holder, the empty point of reference in which property as an unsubstantial relation inheres. The subject of right then

is the substance upon which the floating relation rests, and would have no excuse for existence once it is recognized that social relations possess an entitative status, and thus require no external foundation on which to stand. Property, then, as a form of social relation, i. e., as a relation among persons and things, requires no abstract individual as owner to give it a substantial footing. In the other, social relations objectify in modes of action, and these modes of action, if left to their own forms of precipitation, settle down as repetitive process in habit and custom. We have thus in the one case abstract universality of content, and in the other the abstract particularity of the repeated unit. It is this situation which has given us the isolated abstract person of the theories and the unsubstantial material things as 'movables.' Both can be ascribed such characters as they are assumed to have only because of the abstraction of thought which separates them out of the real complex in which alone they are real, and it is this separation which is responsible for much of the difficulty about owner and thing owned. Given an abstract isolated owner with no qualitative references beyond his own absolute will, it is then impossible to find his proper relations to an equally qualityless 'movable.' There is in fact but one possible way of answering questions about possession under such assumptions as these, and that is by continuous reassertion of force. Thus, once such assumptions are accepted, the origin or beginning of possession is in first occupancy, and the maintenance of the relation depends upon the 'right' to command the public authority to compel its recognition by others. An analysis of the 'right to compel,' and a demonstration of its essential contradiction, will be furnished in connection with the discussion of contract.

These two results represent respectively the tendency to abstract and detached universality of traditional ethical thought, whether rationalistic or empirical, on the one hand, and the abstract particularity of the individualistic tendency in juristic theory and politics on the other. It is within the fields of these sciences that the two motives in social relations must be harmonized, and it is only within the present generation that they have shown strong tendencies to synthesis. And the tendency has reached fullest form perhaps in the law, where the old abstract principle implied in precedent is giving

way to the concrete principle of social 'solidarity.' Since our problem is primarily a legal problem, it will be useful to examine certain tendencies which have become prominent in legal thought with reference to the place occupied in modern life by the institution of property.

Our thesis here is that property referred to an individualized 'owner' who has complete and exclusive *dominion* over it; that property as the criterion or embodiment of a metaphysically individualized 'subject of right'; that property as the necessary specialized instrument of an isolated will which gets expression primarily against or in opposition to personalized beings; that the whole individualistic conception of property is, under modern conditions, more or less meaningless.¹

To carry this thesis the analysis of only a few familiar juridical 'states of fact' and the formula by which they are represented will suffice. In the first place, we may instance the traditional definition of possession as the right of use, enjoyment and disposal of things held by the inherent power of the owner as against 'all the world.' It is not the purpose to go into an analysis of possession; it is sufficient for our present purpose merely to call attention to the fact that juristic discussions of possession put the emphasis upon enjoyment and disposal, especially the latter, and tend to neglect the element of use. In fact the idea of use seems to have been incorporated in possession simply to instance the possessor's more or less irresponsible right to use 'at will,' that is, to illustrate his absolute power to dispose of the property in any way he might see fit subject only to the more or less indefinite equal right of another. In any case, the right to use seems to have carried no corresponding duty (the correlative duty on the theory seemed to inhere in the person against whom the right is directed) to use in any particular way either for one's own or any other's benefit, but to have implied the privilege of abuse, just as the right to dispose implied the right to destroy. It is the distinction that is coming to be made between use and the abuse of property that is contributing in a large way to clearing up the whole question of the status and function of ma-

¹ On this general point of view cf. Duguit, *Progress of Continental Law in the 19th Century*, Boston, 1918, Ch. III. Pound, *Spirit of the Common Law*, Boston, 1921, Chs. VII and VIII. Ely, *Property and Contract in Their Relations to the Distribution of Wealth*, New York, 1922, Vol. I, Ch. VI.

terial 'goods' in human life. It is coming to be recognized that I can use my property in very few ways that do not become at some point an encroachment upon the same right of use of another; that is, that a quite legitimate use of property even when there is no ill will or wrong intention may turn out to involve abuse at some point. And it is being recognized that the tendency of human uses or practical processes to run together and complicate in the intricate activities of modern life does not call for the traditional remedy of matching the one activity against the other with the necessity that one should give way. That is, rights to use are not necessarily exclusive, and where uses 'conflict' it is not a question necessarily of the principle that the stronger will prevail, but that supposedly conflicting uses *are* often naturally, and can quite generally be made in practice confluent to a common end where both may be enjoyed to the full.

This seems to indicate that the old conception of use as the appropriation of a means by the person considered as abstract subject of right is giving way to the larger conception of use as general or public utility. Utility, or the idea of use universalized, was in the old 'utilitarian' theories of law and ethics the idea of use merely generalized. That is, it was given a character which would make it apply to all legal subjects without qualitative distinction, but to them only one at a time. It was therefore a rule and not law. It is still particular in its reference, and implies in every case that utility be fitted to the best advantage of the individual taken by himself. It is not therefore properly speaking a principle indicating a law of order in fact, and has no fundamental juristic or philosophical value in the way of indicating the type of system which thought should assume in dealing with questions of human relations. It has not even cogency as a practical rule or maxim, since, while it has proved useful in the solution of specific difficulties, these solutions have been temporary, and the idea has therefore not offered suggestion in the way of establishing a fundamental principle, which a rule or maxim should do. A rule as maxim ought to indicate, in each of its applications, the existence of a universal which guarantees its validity as a rule. If it does not, the application of the rule will degenerate into the mere repetition of custom, and growth of fact will sooner or later render it obsolete. The principle of utility, as an attempt

to bring order into the functions of use as a legal and ethical conception, has degenerated into a mere blind and automatic acceptance of repetitive process in the form of the recognition of precedent as the criterion of legal procedure. It is thus seen that Benthamite individualism was itself in some of its motives an attempt to get free from the atomism which the scientific rigor of its method imposed upon it, and it is this impulse to freedom from the customary legal and legislative restraints, rather than any positive suggestiveness of the principle of utility, that made it the apostle of law reform and of the experimental method in ethics.

II. USE AS PUBLIC FUNCTION.

But the utilitarian never succeeded in reaching a general universality. The idea of use, as an aspect of the property relation, is yet to be expressed in human relations in its full universality and objectivity. We have seen how the various points of view with reference to the nature of individuality have struggled with the question of universality when that notion was supposed to form the basis of substance and the idea of permanence in the nature of things. And the results of the struggle were the advances that the sciences of human nature were able to bring about in civilization. We have now the problem of demonstrating the fullness of meaning of universality and objectivity when the notion is applied to *relation* as fact. The problem, in brief, is to demonstrate the objective independence and substantiality of relation. And the specific form we have to give it here is to show the objectivity of *use* as the essential functional relation of property. This as a merely descriptive problem would be the showing that *usage* implies something more fundamental than *custom*. This is a matter of extreme logical difficulty, but it will appear that the conditions of the solution have already been laid down in our previous discussion. Thus, we are prepared to understand that custom attains to mere generality through the repetitive acts of individuals. Its constructive capacity is exhausted in the continuous effort to maintain itself. It therefore hardens into mechanical process, and instead of becoming creative and constitutional to the further acts of individuals in the way of ordering these acts with reference to purposes, it becomes the

mere material or abstract means which in the long run defines the limits within which purpose may express itself. Its influence is therefore passive and deterrent. Its nature is not *legal* except in the old and outworn sense that law is the command of an external and irresponsible authority; in which case law 'comes of transgression' in that it implies a metaphysical destructive tendency which has continuously to be counterbalanced by equivalent force. Use as custom, therefore, really involves no relations.

Again, as we have already seen, the universality of use as *usage* has been implied in our discussion. A usage is not the mere sum of repeated uses, nor is it the resultant tendency to act in a specific way which comes from repeated action. Such expressions imply the isolatedness of the individuality. Usage has no specialized relation to individual acts, nor to the abstract generalization that refers to numbers of acts. It is intended here to refer to the whole of things and persons in relation as these wholes develop from within, and become organic to, the social tissue. Persons and things under the influence of objective purpose (purpose which is immanent to the whole where it appears) tends to settle down into not fixed but dynamically permanent forms. These forms as the embodiment of purpose take root and grow then, not by the accretion which comes from repetition, but from the necessity that there be a ground of purpose when purpose requires to be expressed. Usage then refers to the permanent form into which social relations get precipitated, and social relations are just the relations of fact among persons and things as these get defined in human thought and action. Usage then is institution, and institution is the objectivity of use. Thus it is easy to understand how quickly these relations of fact among persons and things will be organized as means to social purpose just so soon as the purpose begins to take definition. As the common idea is there for a given community (and by community I do not mean the subjective sentimentality of likemindedness or 'spiritual harmony'), ordered groupings of persons and things appear as the form in which the idea may be embodied. The form proposed by an individual in such a case is a 'scheme,' and is rejected as useless just because it represents his 'scheming' interests. As proposed by the fact of ordered grouping in things in a way that is or may be from the

individual point of view unconscious and unintended, the form is the '*schema*' or the body into which such purpose enters 'naturally' and it has no reference to a specialized end as does the construct proffered by the individual. It is itself the end. It is the use universalized, embodied in the form which itself as purpose precipitates out of the discrete individualized aspects of persons and things as they exist in their external relations. Use then in its real meaning refers to the universal purposes subserved by institutions.

These ideas are being organized into recent legal literature under such expressions as property 'affected with a public interest,' and 'property as a social function,' etc., some of which will be discussed later.

For the present, let us take one more instance of a modern juridical conception which has done much toward universalizing the conception of property and its use. It is a case where the objectivity of use comes near being consciously formulated as a principle in legal relations, and it is likely that it will get considerable further expansion as our institutions grow. I refer to the conception of liability without fault. It is not necessary to stick to the strict legal interpretation of the phrase or of the 'states of fact' to which it refers as a purely legal conception. In fact I am not sure that I know what the phrase means in legal connections. But it is coming to represent a very wide if not very definite expanse of human relations which are full of significance for other interests than the law, and as a matter of fact it is the insistence of these interests which has compelled the law to take cognizance of it. Such interests as sociology and politics, as well as such practical motives as social reform movements, have forced the general question of the 'seat' of responsibility upon the public mind. In the abstract form of juristic and philosophical theory the idea has had rather full development in European literature, and the gist of the idea has been incorporated into a good many types of modern legislation. The idea is finding its way into the heavy minds of judges also, but in most cases against the resistant power of fixed terminology. Thus the principle is often stated to the effect that the burden of repairing an injury should rest upon the party within a situation who profits most from the situation and is therefore most able to bear it. This language saves the face of one who will be an individualist at

all costs, since he can attribute responsibility to a single party, and interpret the relations involved as competitive and antagonistic, and the 'persons' as therefore little absolutes whose contacts with each other are impacts. The statement corresponds, of course, to the facts in that there is a 'party' who gains most, and the fact is that the relations involved, if the situation is one of industrial relations, are competitive and work against each other toward not an end but a composition of forces. But this merely means that practical life is in a continuous state of unstable equilibrium, an equilibrium maintained by force and fraud and deceit, and that the relations involved are not natural, not what they would naturally set themselves up to be if left to their own creative power, and that the persons involved are compelled to misrepresent their own native purposes and live by a series of self-deceptive acts. That is, the individual has been compelled by force of circumstances to adapt himself to a situation *made artificial and unnatural and unsatisfying by the very falsity of the individualistic attitude which the law maintains*. Human relations, even in industry, when allowed to take their natural course, do not necessarily isolate the 'party of the first part' from all other 'parties,' rather the parties as wills tend to meet in a common object. So if it is a fact that a human situation is interpretable in terms of atomistic elements, it is so because the principles adopted for purposes of interpretation have already been employed to build up the situation as an artificial and distorted mass of relations which in their natural form would grow into an ordered harmony. The idea which interprets can interpret simply because it was previously used to create the situation which it interprets. I mean that individualistic atomism will 'explain' human relations because the idea has constituted those relations in advance. But this does not mean that such a statement is a description of reality; it means on the contrary that the statement is false because it has been forced upon the facts, and that if the facts are allowed to speak for themselves they will give a very different report from that of the shibboleths of individualism.

It is this fact then that relations as they superficially appear have been made what they are by the principle used now to explain them, that explains the apparent conformity of juristic

language with the facts. But in reality the description of situations in terms of isolated persons and things held together (or rather apart) by 'contractual' relations is coming to be recognized as altogether false. The changes in 'fictions,' the modification of the rigidity of contract by quasi-contract and implied contract will get discussion in the following chapter.

What is appearing is that in a situation where injury has occurred, the intelligent lawyer is obliged to see that the injury did not flow from any one element in the situation exclusively, and that it is often difficult to determine within a wide range of circumstances what specific group of circumstances are most nearly related to the result. And the fact is that the injury is not the result of any particular circumstance or group of circumstances but is a normal and natural outcome of the growth movement which represents the life of the situation as a whole. It is true the lawyers can continue to maintain a system of industrial relationships which results in private advantages in which they can share for a long time yet, but the real student of sociology and politics will eventually undermine such 'privilege' by developing a wide appeal to the public conscience. But the danger from that is that laws will be 'made' whereas *real* law is the law that grows up as the constitutional principle of the institutions of life. And it is becoming common knowledge that many of the injuries that result from the 'negligence' or 'ignorance' or 'will' or 'collisions' of wills are simple consequences of situations which would have disappeared long ago if they had not been maintained there by the persistence of the law in its obsolete formalities. The injury flows from the movement of the situation of fact taken as a whole, and the persistence on picking out this or that element as the seat of responsibility and the meritor of punishment is an instance of the magic which exorcizes devils. There is then a liability of the situation as a whole operating as person without any special reference to particular agencies at fault. The dodging of the question behind such bogies as the fellow-servant, or the doctrine of the normal risk, has enabled the courts partially to meet the facts and still save their sacred "principles," but the acceptance of such legislation as workmen's compensation and old age pensions will force an open acknowledgment of the

principle of social responsibility. An even cursory analysis of the facts as they actually are proves that it is the 'whole' that carries responsibility. In the case of the workman who is injured, even though the compensation comes largely from the 'industry,' yet the charge is carried over through an insurance organization and perhaps a long line of agencies but is finally brought to rest upon the 'public' in the form of a charge. It is to be noticed here that 'group responsibility' is merely individual responsibility in a modified form, just as the idea of the 'group' in social theory is a magnified individual and does not meet any of the criticisms directed against individualistic atomism. The ultimate person who carries responsibility is the whole, the system of human purposes as institutionalized in the public body. It is interesting to note in this connection that the courts, while becoming reconciled in a measure to the doctrine of social responsibility, will as yet hear nothing of the principle that just as the injuries which result in industry result naturally from the whole, so do all the normal advantages likewise result from the industry as a whole, and there is no practical justification for the advantages in a given industry accruing in any disproportionate way to the person who risks his capital or furnishes the 'brains,' both of which expressions under present conditions, are coming to be rather tragic jokes. The argument that large-scale industry necessitates vast aggregation of capital is met by the fact that the largest aggregations are after all due to the co-operation of large numbers, and that with the full recognition of co-operation as a principle the social body can fulfill any or all of its purposes without specifying the ownership of its means in the hands of any individual or any group as owner. The real difficulty lies in the processes of administration, and it will have to be learned that even administration, which is now the stronghold of autocracy, will have to become co-operative. Only the whole can realize a purpose completely. And this principle already gets a degree of recognition in the tendency to recognize the proposition that the responsibilities for injuries occurring within an industry are to be borne by the industry. And the fact that the industry collects from the 'public' suggests that the ultimate subject of responsibility is the body politic.

III. RESPONSIBILITY AND THE PERSONALITY OF
PUBLIC ORDERS

But as thus stated the principle of responsibility is subjective and raises all the legion of questions of the 'personality' of the public body. Such questions, as we have seen, can only be answered by the discovery of their meaning in terms of objectified fact. And we have seen that the objectification of the personality in terms of fact identifies it in one of its forms with property as the objective whole of the means to realization of purpose. "You do take my life when you take the means whereby I live." Injury then implies compensation as the only objective means of reparation or redress. When we say that an industry as a whole is responsible for the injuries that occur in it, we imply that the injury can only be made 'just' by reallocating of portions of the means through which the industry as a whole reaches its end, and which in this case fell short of the end by so much as is represented by the injury. It fails to reach its end by just as much as the injury represents, or, so much of the means as is represented by the injury are not contributing to the end and can be made to contribute to the end only by redirecting them so that they will not interfere with the 'person' injured. The idea is that practical relations are kept in balance by maintaining the proper distribution of the proprietary objective means through which alone ends are realized. Then a wrong or injury as objective is righted by the adjustment of the means which in the case of the injury are misdirected; and a 'claim' is met by the adjustment of the body within which the claim represents a thwarted life purpose.

This is not the place to enter upon a discussion of the theory of punishment, nor of the nature of crime and 'criminality' as diseases of the 'will'; the whole mess of criminal law is an abomination to the sentiment of the ordinary mind. A 'crime' must come to be recognized as a situation in which elements of means fail of their proper ending, and the cure or 'punishment' for crime is the compensatory adaptation of means so that none of the active agencies 'miss the mark,' a phrase which perhaps correctly indicates the real, as well as the original, meaning of wrong or 'sin.'¹ And it shows a total misapprehension of fact

¹ Dewey and Tufts, *Ethics*, p. 96.

to argue that crime must have a cause in the will of a natural person, or that the tendency to crime can be curbed or modified by doing violence to natural persons. We still, in our public will at least, accept the doctrine of 'natural perversity.' Property is the 'will' or 'person' in many cases that wrong and evil, as well as right and good, can properly be attributed to. It is upon this fact that we depend when we describe property as a moral instrument. And all practical questions will have to find their appropriate and final solution in the objectification in the form of property of the purposes involved in the situation of fact taken as a whole. The vast majority of the questions of property which appear insoluble except to the prejudices which represent established and obsolete theory, appear insoluble just because the prejudice will not permit of their being looked at from the point of view of their locus in a whole of fact which is "productive of legal consequences" in the sense that it embodies the principle which gives order and law to the whole. This means that the situation expresses itself as will. All real law is constitutional law; and is 'made' by the reality of fact which requires to be principled with reference to an end. A 'state of fact productive of legal consequences,' acting as will, creates the law which characterizes the consequences as legal; creates both the consequences as fact and their legality. And our specific questions of property have to be continuously reformulated and the legislation which seeks their solution continuously patched up with reform measures and patent nostrums just because there is not the freedom from prejudice and the intelligence properly to appraise the 'legal state of fact' in which such issues get their legal consequences. Legislation then is finding the law in the facts, not making the law for the facts, as will appear in the discussion of the constitutional and creative capacity of contract.

IV. PERSONALITY OF PUBLIC ORDERS AS FICTION

Property then justifies its right to an objective and independent status, and, as a fundamental institution of human life, as one of the forms in which human life as a whole is 'set up,' it can be called an individuality; and from its intimate and organic relations to the distinctively human form it may be said to be a person. Being a person, then, it is competent in a juristic

sense, and the characters of right and wrong, will, intent, purpose, can all be imputed to it. And since it embodies all these characteristics in realized purpose, it establishes a right to superpersonality in the sense we have accepted. Property as incorporate can sue and be sued, is liable or responsible, can perhaps be 'guilty' of crime or tort, in any case can be punished, in fact can in perhaps all the fundamental juridical relations qualify for full personal competency. And when I speak of fundamental juridical relations I mean that it as ordered fact performs functions, and that these functions as objectified uses or usages constitute the subjective elements of principle which destine it for an end which is carried within its present self. Nothing more than these statements, or expansive interpretations of them, can be said of individuality in any of its degrees, and, like any other individuality, the essence of property is to be determined by the position and function which it represents within the completely objectified person which is the whole.

We thus see that the conception of liability, and especially in the larger sense of responsibility, as attaching to bodies of property considered as forms of personality, creates 'impersonal' rights and the conditions of duties. It is true that, so far, jurisprudence is willing to recognize this fact only in the specialized cases of bodies of property organized as foundations, etc., and, even here, recognizes the fact only under the assumption that rights, duties, obligations, etc., attach to masses of property by fiction. The conception of rights of property still supposes them to inhere in the 'subject of right' and that is taken to imply the natural person. But I believe it has been sufficiently shown that other forms of reality possess precisely the same nature as the natural person; and if we can accept the principle of the dynamically ordered identity of fact as the basis of personality in all its forms, and with special reference to what I have called the higher forms of corporate personality, then all the characteristics of the natural person are to be found in these higher forms. Moreover, many of the characteristics of the natural person that are not explicable practicably by the ordinary assumptions with reference to the nature of the natural person, find easy explanation in the larger idea of individuality "as a case of a law."¹ The rights of individuals

¹ Bosanquet, *Philosophical Theory of the State*, London, 1920, p. 292.

in the old individualistic sense are not determinable with precision in many practical situations, and the result in theory is the make-believe and confusion surrounding the idea of fiction, and the indirection and failure and futility which attend our regular efforts in the administration of justice. The evolution of property from fee simple ownership and irresponsible control through the institution of the trust and on to the form of the foundation, has already suggested that an estate is an *état* in the French sense, that is, the body of property has an independent subsistence and functions in its own way and fulfills its own purposes. It can still of course be argued that all the rights represented in these cases are 'held' by a natural person as trustee or agent, but the device of agency begins to be worn threadbare. And if this language is to be regarded as sacred, if we must continue to regard rights and other legal phenomena as inhering in persons, then the only way out of many difficulties is to accept the fact that personality is the essence of many forms of reality in common with natural persons. The solution of many legal difficulties will then appear at once the moment the *type of the personality involved is determined*. And if it be argued that constitutions and legal systems do not provide the machinery for such determination, then the necessity is to show that such machinery can be perfected by modification of the old, or to invent new machinery. We can accept without alarm the fact that such invention of new machinery will affect the essentials of constitutions.

V. PROPERTY AS A SOCIAL FUNCTION

(2) The analysis of the facts of ownership (and the distinction between ownership and possession may be for our purposes overlooked) in connection with the relations of life, especially when these relations are approached from the point of view of the individual, inevitably leads to the conception of property as the logical substrate upon which the wholeness of human relationships depends. It is the ground of such unity as civilization has been able to attain. It is therefore social, rather than individual in its incidence upon human life, if we are to recognize the antithesis between social and individual as absolute. But it has been the purpose all along to provide a basis upon which the sharpness of this social-individual distinc-

tion could be eliminated. A fuller discussion of this same topic will concern us for the moment. We shall first show in what sense it is necessary to take the proposition that property is social in its 'ownership,' and then go on to show that some precision of ideas must be obtained on the matter of the distinction between 'personal' and 'private.' For, a misapprehension of this relationship will appear as the basis and cause of the confusion into which the institution of private property has fallen, and a clearing up of this confusion will soften the harshness of the social-individual disjunction.

We have tried to show in Ch. III that the form and content of mind is conditioned in the main by the circumstances of the environment, recognizing of course that the significant aspects of the environment are other mind-syntheses. This means, when mind is looked at objectively, that mind as active agent is identified with the object-syntheses in which the active aspect finds its end. The content of mind then is the system of object-forms which make up its environment, and the mind in its internal aspect is the law or system of laws which are constitutional to that content. We thus avoid by appeal to fact the mind-body problem, a problem which as ordinarily stated is hopeless just because a contradiction enters into its statement. The appeal to fact is the appeal to the practical life, the life as objectified and reduced to law in the political and ethical and legal disciplines. Since, then, it is the object-synthesis which is the reality of mind, the distinctively mental aspects of reality can be understood best by analysis of these object-syntheses. In Ch. IV we have discussed the object-synthesis as the natural and material ground of the animate existence, and learned there that the *essential characteristic of the life-unit* was the *relations of life-units which constitute the continuity and permanence of the species*. In this conception of the species the idea of object-synthesis becomes universal, and the scientific account is transportable into the logical account of reality. Then the object-synthesis becomes the universal principle of objectivity, and fact sublated to the status of object-synthesis can be described in terms of its real characters. We then see our facts 'in principle,' *sub specie aeternitatis*. It is on this ground that we describe property both as the object-content of life purpose and as the principle of that purpose. In the one case property becomes the key to the

nature of the individuality; St. Thomas was right in finding the principle of individuation in the soul's desire for the body. In the other case, it becomes the principle of distinction among types of individuality by virtue of its various forms, and at the same time the principle of synthesis and continuity which orders these types into the universal as species.

It is in this sense both of objective content and of objective law that property is identified with the species—the social. Property is not an innate or natural right of the individual taken as a dissectioned unit, as a quantitative whole cut off from the indefinite mass of individualities. But the terms innate and natural are both literally true as applied to property and its relation to individuality. Property is the innate inherent, natural, imprescriptive attribute of individuality, but of individuality in its universal sense and scope. It is the necessary adjunct of the individuality in the sense that it is the objective ground of the individual's universality. But that means that the nexus between property and the individual makes contact with each possible through the aspects by which they are principled, hence property itself becomes the element of law in the nature of the person or individual.

I am not specially interested in convincing anyone to whom these arguments would have no weight; it is therefore not an attempt to prove my point so much as to exemplify it that I now turn to the facts once more. And the exemplification will be useful in that it will itself be a deduction of the principles that are necessary to the right ordering of practical relations. In general, the facts adduced to establish the institutional character of mind are in place here. This is the conception that rules our thought throughout; the conception of the constitution of a form of reality by its objectified law. The fact then is just the law objectified.

Take the case of property in land. The ultimate social claim upon it can be established in general terms simply by reference to the necessity of its products to the life of the whole even when the life of the whole is considered in its lowest form. It is the ultimate form of the food-object; and if it be argued that the 'whole' does not eat, as Aristotle insists that it is to the individual that the doctor gives his medicine, the reply is that the whole as such does not lie in *immediate* relation to *anything* else than wholeness. Land is therefore

the *mediate* or ultimate condition of life in its lowest terms, and life in this form is the objective content of the form that does eat. So Aristotle¹ is wrong; it really is to Man and not to the individual that the physician gives his medicine. The land is the body of the state, as is perhaps recognized by political thought in every form. The territory is the material, i. e., the proximate, cause of the state in the Aristotelian sense; and it is to encroachment on territorial rights that the most primitive and fundamental instincts of peoples respond, even if the territory involved assumes the form of some of the points of friction of international law and diplomacy. The attack upon the land is invariably felt to be a thrust at the common or whole life; the land is recognized as the objectified form of the life of the political whole. It is the corporate body as the ground of action of the whole, and the wholeness of its implications is seen clearly in the transitional form of territory known as spheres of influence, protectorates, etc. The sphere of influence is the first of what through protectoral and suzerian relations becomes the complete injection of a foreign element in the body-whole; and the possessory relations become in time as natural as those established by first occupancy or colonization or conquest. The point is that in these territorial acquisitions, no matter how lame they may be from an ethical point of view, the corporate sentiment of solidarity is immediately aroused and war can on that account be precipitated quickly. Action which threatens a landed base is interpreted as a body thrust, and is resented perhaps more quickly than any other form of breach of intersocial relations. Again, to take a pathological case, the terrain and the complicated references it carries, becomes the all-important matter in war, and a slight gain in land is often regarded as justifying what would otherwise be regarded as very severe loss of life. Essential to property in land is the sentiment of wholeness in the social order. Public property is thus the ground of the universality of law and the final basis upon which respect for law, which as consent is the essence of law, is to be rested.

But the case is even clearer in cases of private or personal relations. The 'unearned' increment due to social development of the vicinage is coming to be taken as property of the whole

¹ *Ethics*, Welldon's trans., p. 12.

and collected in the form of taxes. This is generally recognized in many other countries, and the stubbornness with which we stick to the antiquated doctrine of private property is nowhere better instanced than in the case of land withheld from productive use by real estate operators. About any large city, the condition is perhaps general, the land is bought up for speculative purposes and withdrawn from use, so that the city is girdled by a belt of abandoned land often several miles wide. The right of possession, and in many cases the real ownership would be easily questionable, is the right to abandon and abuse, to prevent the contribution to the whole to which its object is destined and which is supposed after all to justify ownership. The social whole is moreover paying dividends on this unused land through the excessive charges made for such parts as are sold, so that the withdrawal of the land from use has inflicted a double loss. It therefore renders the 'sanctity of private right' ridiculous and reduces the doctrine of inviolability to a positive menace. It results in overcrowding and penury and consequently disease and immorality whereas the only argument (besides the conventional abstractions) urged in its defense is that it makes sanitary improvement keep pace with the building expansion. But even in so doing it justifies itself, when questioned, as private right by the appeal to social advantage, which is a tacit recognition that the real 'person at interest' is the social whole. Whether the method of asserting the social right through the power to tax is the proper solution for such a situation does not matter. But it is clear that the proprietary right resides ultimately with the whole, and that such uses and privileges as its occupier or possessor may have are delegated to him by, and get their existence and the guaranty of their recognition from, the law which expresses the essence of the bodied whole. This does not mean that what happens to be the statutory law by its authority creates the right to property and then confers it upon the individual. This is the mistake of the positivist interpretation of the meaning of law, which derives the essential dignity of law from the power of the agent which issued it as his command. Real law has no relation whatever to authority or power, or force, or to any special agencies of an executive or administrative sort whatever. The law gets its dignity from its being the bond of unity which objectifies and incorpo-

rates a human whole, and it has no origin and consequently can have no external guarantor for the simple reason that it itself creates the only agencies which conceivably could uphold it. That is, the law defends itself by *legal* methods. It is not 'made' and consequently does not require to be remade continuously by legislation or edict; it is the *natural* principle of unity (such as the unity may be) which subsists within any real bodied whole. This indicates the truth of the old doctrine of natural law and natural right; only it avoids the anthropomorphism and magic to which that doctrine fell victim. Property then inevitably refers itself to law and law has no meaning except as the universal principle of the whole. To identify a legal right therefore with an element less than the 'independent' whole constitutes a contradiction, and the contradiction can be overcome only by lifting the element to the position of full independence or universality where its private aspects disappear. A private right is therefore a contradiction in terms except in the obverse aspect in which it appears as a guaranty to the private individual by the whole of an element of connection with the whole. The right of the individual is then the aspect in which the individual has been legalized by a degree of incorporation into the whole. But in this aspect the right is not private in the sense of unique and exclusive incidence. The 'equal' right belongs to all individuals, and so belongs to none of them. The right is the criterion of the individualities themselves, the law that gives them status in the constitution of a larger whole.

We are not here so much concerned with the question whether property is private or public as with the demonstration of the principle that *property is an element of law*. And in this demonstration, the public character of property is carried as a corollary, the necessary connection between property and the whole shows not only that the whole as owner is an individuality and *as human* a person, but also that property as the life basis of the human person is also the principle of its law. The essence of this law will appear in the next chapter as contract.

We have suggested above that the right in land is fundamental to all proprietary rights. And we have seen the inevitable reference to the whole which the right in land carries. But it is equally demonstrable that the social background sup-

ports all rights of a proprietary sort without referring them directly to their type in the land right. That is, it is possible to pass from any proprietary right directly to the ultimate owner in the body politic. Thus if we take such seeming abstractions as site-value, copyright, or commercial good will, we shall find that the personal rights which they imply rest in the nature of the ultimate person as the body-whole, just as do the more tangible juridical entities. The site value is hardly distinguishable from the land value discussed above, and our conclusions drawn there will apply here. A copyright is a recognition by the whole of the discovery and definition of objective value by an individual, and the legally attaching that value to the individual temporarily to enable him to organize the value for common use. Even the monopoly given the individual is in the interest of the whole. Thus in the very definition the point of reference and differentia is the whole good of the social body. The discovery and the manufacture or production of the value is the execution of the law of the whole through the individual as an instrument; the individual is made the institution through which temporarily the law is executed or administered, but it is still the law of the whole. And such private uniqueness and special advantages as accrue to the individual in the process, and whatever value may fall to him, is intended to further consecrate him to the uses of the whole. The purpose is to stimulate the individual to the improvement of the instruments of life, but the instruments of life are designed essentially with reference to the stability of the whole. The monopoly has its property value from its importance to the property system which supports the life of the whole.

But the fact of good will as a product of individual 'initiative' in industry seems to be of another sort. By my own efforts and integrity of character and rectitude of dealing throughout long years I create about my establishment a fixed conviction of dependableness and stability and solidity which is literally the embodiment of *my* life. It is thus on your own definition, you say, that the results which come from this situation, since the situation embodies my very life, should find their natural incidence in myself as my exclusive right. But it is answered that so much is granted in connection with any and every form of private property; and it is insisted that what is meant is

that property is so close to the personality that it can in one aspect at least be taken as the essence of personality. It is true that the good will is the very life blood of its creator. But the question is rather, who is the *personal* creator of that good will. Our individualism is so accustomed to the ultimate disjunction we make between 'me' and 'others' that we feel, the moment any personal questions are raised, that what is essentially mine is being attributed to an exclusive 'other.' The good will created by me is personally mine. But it is mine in the sense of the objective and external environmental fact incorporated as the body of myself, and as such it must recognize the principle of mutuality. We have laid down that the objective *milieu* is common-objectivity to all persons. And, further, within that *milieu* I am myself with the special appurtenances which adhere to me part of the objective detail which incorporates into a more comprehensive individuality. Then the distinction of mine and thine does not apply; but the question of the ownership of my appurtenances is one of the degree of independence of my personality. When this question is raised the first stable degree of individuality discerned is that of the body whole, since it is the corporate form of lowest degree of individuality which shows itself fully principled. Property then belongs to the *person*; but the real question is to *which* person. And this is the question of degrees in continuity principled by the law of the whole.

From any direction the question is approached, therefore, it appears that the old notion of property as the special and exclusive and unique essence of the human individuality, while in principle true, must be modified. If we take this old notion as literally true, then the human individuality must be taken as the social body-whole, and then possession and ownership refer to the social or political or legal or juristic person primarily, since most modern property is held in joint use by individuals. Property is then a question of the relations of persons. If the notion of private property is denied then there is involved the mutilation of the personality, since property has no significance whatever out of relation to personality. What very obviously is the core of meaning in the old doctrine of private property is the faith and conviction, or it may be designated the perception, its evidence is so immediate, *that property is the essence of the person*; from which it is imme-

diately deducible that by 'private' we mean *personal*, and that the destiny of the person is bound up with the fate of property. But when we consider property in terms of the *relations* of persons, the complexity of such relations constitutes the ultimate person as the whole. Personal property is real estate and real estate is commonwealth.

VI. PROPERTY AS THE PRINCIPLE OF DISTRIBUTION AMONG INDIVIDUALS

(3) But the recognition of property as personal in essence is just the beginning of our difficulties, as it is also the principle from which our solutions must issue. It throws us back once more upon the general theory of personality, and necessitates a special or exemplary statement, or a statement adapted to special implicates of personality, of our doctrine of corporate personality. That is, it raises at once the question of corporate property, the most involved and difficult of practical considerations. A careful analysis of the nature of corporate personality, and a recognition of the modifications of the prevailing property idea it entails, are therefore a necessity to any understanding of property relations, and we will have to face them in due time.

But first let us get clear on what is meant by the statement that private property is personal property. It perhaps need not be said that by personal property we do not mean just the category of movable things as the term is used in narrow legal connections. We do not by the term refer to a *class* of things as property *at all*, but mean to refer to an essential attribute of things; an attribute of things *entitaded* upon their relations to persons. And we may remark here that the special attribute indicated is a logical character, and as such will have to be deduced from the relations which subsist among things. The traditional classification of property into kinds or types ceases to be of any great consequence in modern conditions, as sufficient time has elapsed since the adoption of that classification to result in real differences which constitute new species, and division lines between these new classes cut across those of the old in all sorts of ways. We are therefore free to dispose the facts in whatever ways consistency with their present constitutional or organic principle requires, which means

that we are obliged to find the law of the facts more or less independently of their historic classifications. When we say therefore that all property is personal we mean that the principle of the personality or individuality is the law which gives to property in all its forms its status and function. Whatever attribute or aspect or relation of property may become the ground of practical difficulty in the administration of property or in its use, becomes, then, a question of the relation of the thing involved, as the matter of the property, to a person. Its relation to another thing as another form of property would have only the importance that comes from classification, and could give us a principle only in the mechanical sense of representing causal repetition. Classificatory principles are never laws. Where a *rule* is required therefore, or a principle in the real sense, a sense in which the *dynamic* or growth capacities are assumed to constitute their object *outside* the mechanized relations of things, the classificatory process has little value. The *real* principle which institutes relations into objects with universal intent, is the Person. But it is the person *as law*, not a specific 'subject of rights.' The weakness of our legal assumptions here is that they all seek to identify, through the device of ownership as criterion, the property-object or 'goods' with some definite personality as distinct from all other personalities. It is for them a question of *which* person, not a question of the personal nature of the property or the law of personality involved. The principle they rest upon is therefore quantitative and thus neglects the element of the person which is immanent in every 'good' however material it may be. And in the effort to isolate the definite personality all the very difficult questions of ownership and possession and right are raised, matters which should be disposed of by inclusion in the principle which defines the nature of the property at issue. The discussion of property as personal will therefore develop new aspects of the questions of possession, ownership, right, use, etc. And we may indicate here that the knotty problems of possession and ownership, rights and duties, etc., get adequate solution only in the discussion in which they are shown to be meaningless as peculiar appurtenances of 'subjects of rights.' A rational development of property as a social function would largely leave these questions on one side as the mere requirements of a false theory.

Then for the principle which defines the status and function of property by reference to what particular natural person it relates to must be substituted the principle that all questions of property must find their solution in *the differences of degree* among the individualities involved. The question of its specific point of incidence of a matter of property in a subject of right is in many cases undeterminable because unintelligible, and the attempt to dispose property upon the assumption of distinct rights of exclusive personalities leads to all manner of horse-play in the form of fictional constructions, whence arise endless litigation and delays with consequent loss of respect for law. This principle is itself complex and carries two aspects which must not be confused. For, in the one aspect, the purely instrumental character of property, the character in which property is a mere means, establishes a relation to its personality that is in a sense external, the case in which property as such is considered as the objective and external agencies through which the personality effects its purposes. But this tends to neglect the inalienableness of the property right, which in its historic form is a confused recognition of the personality of real property. But we saw in this case, and the result must not be neglected here, that personality in its aspects of internal and external, means and end, implies a distinction that is never fully real, and that in the reality we see the operation of the principle that the real carries its end in itself. The distinction of means and end, internal and external, 'subjective' and objective, all imply and are conditioned upon the synthesis which represents the continuity and permanence of the growth relation, and are all relative to that synthesis. Objectivity is not something therefore that is superadded to a given, but something which represents the last stage and fulness of self-identity of the real *become* objective through the dynamic or volitional aspect of its relations, both internal and external.

In the other aspect, our principle of property implies that the objective aspect of property itself, as fully realized, *personifies* on its own account, *sets up* or institutionalizes as an individuality in its own name and on its own hook. Instances of this form of individual, we have seen, are the foundations, estates, masses of property which in a measure detach from their natural connection with the natural person as private,

or from their partial and subordinate connections with other corporate forms, and constitute themselves a personality in full right, and of higher degree than the natural person. We have here perhaps the origination of the subjective element, the case where a 'subject of right' is born or comes into existence. The characterization of rights as private, therefore, means no more and no less than the claim for them of their validity as established through their direct incidence in *a person*, or their necessity as immediate and direct instances of the law of individuality. But it does not in any way specify the 'natural person' or other specific degree of personality; the 'privacy' of right refers to the *principle* of individuality. The designation of a right as private has consequently no reference to any particular form or degree of individuality considered as unique or exclusive; or to any claim of priority of worth or dignity of any form of personality over others. It does very positively assert that the right is real as expressive of the dynamic or will functions of individuality in general, and is the *practical* equivalent of the assertion of the reality of right as grounded in the 'nature' of things. Once more, this is the essence of 'natural right'; an expression which asserts the direct perception of the inherent capacity of direct and unmediated functioning as the essence of individuality. But a 'private' right has no meaning as the unique and exclusive mysterious power attributed to personalities which in their fundamental nature are distinguished from each other as atoms. A private right is the direct and universal symbol of the dynamic will of individuality, a real characteristic of individuality as universal. The privacy of the right is not a specification of its point of inherence, but the characterization of a function as universal in its applicability to individuality as such. The right as private is the right as *personal*; the assertion of the reality and validity of the right through its representing the characteristic function of a person.

This enables us in the cases involving the practical application of rights to avail ourselves of the general definition of rights in a previous chapter, and to show the universality and objectivity of right even in its narrowest special or concrete form. It demonstrates in the concrete the objectivity and individuality of particularized forms which are seen to be the essential nature of a right, and renders it possible to treat of rights

in a practical way, without involving the prejudices and special pleading inherent in the attribution of rights to particularized subjects. It is for this reason that we were justified above in describing right in objective and social terms, and in describing right as referring to the relations of things as objectified in institutions. A right is the functioning of individuality as such; it is the postulate of the conditions of general freedom as a set of conditions which become through the acts of persons the ground of specific liberties. As objective, Right is freedom as enacted into institutions; as subjective, as specifying particular points of incidence, it is freedom as merely 'actionable.' Real, i. e., personal, property could never be a right in the latter sense since it indicates a means not yet become an end. And the question of the validity of the right is simply one of the directness of its emanation from individuality. The attempt to validate a right therefore as the peculiar capacity of a distinct 'subject' depersonalizes the right in severing it from the conditions of its objectivity, and makes the question of the reciprocity or harmony of rights within a system impossible. The ground of order is *right*, not rights. Rights are the pluralized subjective conditions of right considered as the direct functioning of the individuality. And to attempt to make them private, to tear them out of the living tissue which is the ground of their functioning, is to destroy them as living realities. The system of rights or public order which is set up on a basis of such denatured rights is just the aggregate of atoms the total energy of which is exhausted in maintaining a degree of merely apparent external harmony and permanence. The stability of the state is just the objectivity of right—right ended in itself as order. The state as external guarantor of rights, as protector of rights, as protector of rights by force or authority, is a contradiction in terms.

No fuller or surer justification of the theory of right as the essence of person could be given than through a discussion of the current conceptions of right involved in the various doctrines of vicarious functioning which make up a large part of the law of property as it now stands. Nor do any of the legal doctrines show more conclusively the inadequacy of the conception of the natural person as the representative of the legal and political personality, the individual involved in large scale human relationships. I refer to such doctrines as agency,

trust, etc., in which one 'person' acts for or in behalf of others. The confusion here in theory, and the uncertainty in practice or procedure in judicial determination of right gives a good negative ground upon which to elucidate and amplify the statement of principle. It is somewhat difficult to avoid complication with the idea of contract in discussing agency. I do not happen to know, or care, just how the individualistic lawyer would visualize the relation between agency and contract; but taking agency in its most obvious sense in which one isolated person *acts for* another, it implies or seems to imply a temporary and partial transfer or renunciation or assignment of rights. Thus all the difficult questions of alienableness are involved. Whether the transfer is reciprocal and compensatory seems to make no difference to general theory, that is, it seems to be immaterial whether upon the release of his right by one person some modicum of right which is assumed equivalent is received from him to whom the right is released. That is, it seems to make no difference whether some type of agreement or contractual relation is set up, so long as we interpret the transfer of right as merely the giving up of a definite thing by one person and its acceptance by another. It seems perfectly simple to assume that I may take over and exercise the right to sell an object which is manufactured by another, and that the sale of the object would be exclusively my business and the making of it his. But in such a case it would seem that rights are created rather than transferred. It is also conceivably simple if we think of the situation in terms of contract and the meeting of wills, so long as simple rights and their assumed equivalence constitutes the elements of the situation. In fact, the situation seems to resolve into the simple matching of part with part and the adjudication of the equivalence of parts in strictly quantitative terms. The traditional individualistic conception of law on this point then is that of a set of abstract pragmatic rules promulgated by an authority which has no direct relation to situations where the rules apply. It is true that, according to the theory, the rules are found, but they are not law until sanctioned by authority. Nor do the rules themselves have any closer relation to the situations than the abstract fact that they fit on to the situations and regulate them, why they should do so apparently never being asked. Consequently the dynamic character of human relations, which

cannot be evaded, and which was hardened into an external and impact theory of will as desire, naturally forced into the foreground the conceptions of irresponsible authority or the strongest power as sovereignty on the one side and the ultimate point of incidence of freedom and liberty in the exclusive individual on the other. And the further those conceptions were developed the further apart and more irreconcilable became these two absolutes. A 'compact' theory of the state was made necessary therefore by the simple necessities of the nature of the elements of which the state is composed, and would have been necessary if for nothing else than that the mode of thought required an origin for the absolute authority which stood behind the law to give it the proper sanctions and the conditions of respect. Such are the contradictions involved in the assumption of the impersonality of property and its subjective correlate, the right of property. To regard property as impersonal throws the entire system of practical relations into confusion. It thus contradicts itself.

Thus the special and obvious weakness of the individualistic legal system lies not only in the abstract exclusive type of person which it postulates, but also in the contradictions which arise when these individuals are endowed, as they must be, for purposes of general theory, with 'inalienable rights' and also with the 'freedom' to transfer or 'alienate' these rights, as they must do when they come into practical relationships. The unfortunate individuals are required by the nature of things to eat their cake and hold on to it at the same time. The necessity of inalienableness must come to terms with the fact of alienation and the vast mass of legal literature on the topic of transfer of rights becomes, under the theory of natural rights, one of civilization's outstanding monuments to the misguided ingenuity of men.

VII. PERSONALITY OF PROPERTY AS INSTANCED IN THE TRANSFER OF RIGHTS

It is not necessary to go into the intricacies of this type of legal thinking. Suffice it to say that when the theory came into contact with the fact of human action the necessity for some degree of congruence between principle and fact resulted in the system of artificial makeshifts which constitutes the pro-

cedural aspects of the law and which harden down into substance elements under the influence of time and use. Perhaps the rock upon which the theory suffered worst injury was the fact of responsibility. The facts of transfer of rights (what is in reality the distribution of functions) can not be ordered on the mechanical formula assumed, but are seen to involve elements of a distinctly inner or subjective character in the facts of motive and desire as they affect action. Consequently the element of 'intent' enters largely into the interpretation of fact, and in this term there are involved elements which differ *in kind* from the elements which are assumed to be adequate to the complete ordering of human relations. This means that a subjective factor has intervened in the otherwise completely mechanical situation, a factor which throws the system as a whole out of plumb. Then the magnificent but for theory futile edifice built upon the postulate of fiction appeared as the only *practicable* way out, and was as a matter of fact the only way out until the system as a whole should be thought through and founded again upon other principles.

At the point in the legal system represented by the transfer of right the reorganization of such human relations as are represented in the law might very well begin. It would require specialized legal knowledge to discuss matters of detail here. Even to appeal to example in this connection may be hazardous. But the modification in principle which is required can be seen by any one who has learned to view the facts and problems of human life in the objective and comprehensive way necessary to the deduction of principle in any field. There is obviously no way out of the maze of construction and reconstruction and side-buttressing and propping characteristic of the law of property, so long as no fundamental effort is made toward reconstruction on a basis of real principle. No intelligent person who has given an adequate degree of thought to the question can, it would seem, avoid the conclusion that the property system rests upon principles that are essentially wrong, and contradictory with the principles of other large spheres of human relations, however adept he may be in refusing the conclusion clear and straightforward expression. The destiny of property (and property is the embodied life of human culture) rests at the present time in the hands of those who fear, and who fear for reasons which long ago

rendered them incapable of thought. Thus does human destiny rest upon the instability and accident of a passion so low that in other relations of life than property it has been pretty well bred out of human nature. But the symptoms of the disease do not indicate the destruction or abolition of property, nor the denial of the right of private property; but it does indicate the rethinking of property until it is principled anew upon the ground of a better understanding of human nature.

Rethinking of the problem of the transfer of rights seems to have made some progress in recent years, and the new principle of property required seems to have been discovered through the simple expedient of looking at the facts of 'transfer' from a different point of view from that of the ordinary. Quite obviously it has appeared that what we call the transfer of a right is *in fact* the distribution of a function. It is the question of looking at the fact of social solidarity as the objectivity of individuated purposes; of seeing the multiplicity of 'exclusive' motives and moments as incorporated in one total meaning and embodied in the system of external means we know as property. The point of view assumes that a function can be fabricated and interwoven into the whole of purpose without reference to its specific point of inherence, that its locus may be found in general and as a matter of principle, without reference to the exclusive entity which individualism requires. The rights involved in transfer are interpersonal processes or social functions, and their adjudication is a matter of disposing them with reference to each other and to their place in the whole regardless of the specific, private interests which natural persons may have in them. And one result which should follow from such a procedure would be the separation of *right* from *specific interests*, and the recognition of the fact that 'doing justice' often has nothing to do with the private interests of exclusive persons. The *pereat mundum* type of justice, the justice that is no respecter of persons, is just the justice that is done without this specific reference, justice done by and through the harmonizing of objective relations irrespective of the 'interests' of the terms between which the relations hold. The 'interests' rightly conceived, are just these relations in their objective and universal form. While it is true that justice always implies interests, it is also true that

the interests are never matters of principle, but merely the content of the law which orders them into a functioning system. Justice is a type of order in personal relations considered objectively, and not a private property of those who can get their interests satisfied. Having justice done me or getting my right consists merely in having the locus of my characteristic function determined from the point of view of the objective whole. And the interest to be satisfied is the interest of the whole, the ultimate principle which governs the quality of an act and is at the same time the end in which the act is realized.

A transfer of right is then simply a reallocation of a function, the transfer of a process from one set of instruments to another. And the standard that guides in the distribution is not the whim of the personal instrument but the end of the whole within which all whims and interests must find whatever reality *in justice* can be ascribed to them. A right then has an objective status and stands on its own responsibility. It is the universality of an act subsisting independently of the actor or of the specific action and as a dynamic principle which helps to maintain the life of the whole. It is a mode of adapting and appropriating means to ends irrespective of the nature of the means, the means being chosen with reference to their constitutional relation to the whole and not with reference to their specific or private characters. It is only from this objective point of view that rights can be 'guaranteed,' rights can never become the private possession of specific persons. My rights are my functions within the Right, and it is the constitution of the Right that sets the metes and bounds to my rights.

Since rights are in a sense independent of the personal means through which they get fulfillment, their transfer simply means the exchange of functions by persons. If I succeed to a right through inheritance the implication is that the objective system of rights stands there as the permanent constitutional law of social life, and that a function that was performed by a given person now devolves upon me and some day will pass from me to another. It has a status independently of the line of persons through whom it finds expression. The guarantee of rights through legal process is merely the determining which of a number of persons shall perform a given function, and when the matter is decided the person chosen is expected to respond to a duty. Right, that is, when given particular in-

cidence, becomes duty. It is true that in the 'natural' right theory a person was supposed to be able to hold and enjoy a right by the withholding of a function from performance if he chose to do so, for example, he could allow his fields to lie idle, and still hold his rights to their 'use' and 'enjoyment'; but the absurdity of such a situation begins to dawn upon our minds. It comes from the Hedonist's preference of '*enjoyment*' rather than *use*. If we guarantee a private right *because* of its being the way to serve the 'good of the whole,' then the withholding of the good is a renunciation of the right. That is, if we recognize the whole as a 'party at interest' then the whole must, as far as it is a party at interest, serve as a standard and principle for determining the performance of a function and the residence of a right. Thus the tendency in complicated cases to recognize that property is 'affected with a public interest' is being made the ground of sweeping regulations of private rights, and even those who hold most tenaciously to the privacy of right are obliged to recognize that the objective or public point of view is the only one that *can* be taken under the circumstances. That we have so far found no better method than negative regulation of property rights by law is due to the fact that we still unconsciously but rightly recognize the state as the ultimate 'subject of right,' and equally unconsciously but wrongly that the state can enforce its rights only because of its superior power. We still look upon the state in the last resort as the Leviathan, irresponsible in will and unlimited in power, which imposes law upon us as a command, an absolute fiat. But the subject of right can not survive the requirements of the law when looked upon as *constitutional*, as issuing not from an irresponsible will but from the functional nature of things as things naturally personify into orders.

The conception of Person or Subject therefore is inevitable and inherent in the idea of right, and is inherent in the idea of right because it is objective and substantial in the system of relations within which right has its natural locus. In the absence of the Person rights have no meaning as matters of principle, and the transfer and distribution of rights in practice would be impossible except as the person is recognized in its capacity as practical maxim. It is necessary to say then that the Person is real and that it is the point from which all

elements of meaning of right radiate. But this still leaves a vast difference between what is indicated as a practical maxim in the processes of 'doing' justice, and what is the necessary implicate of the thought process as that process is engaged in defining the real nature of justice and right. And when for theoretical purposes (purposes of defining the real) the person is identified with the generalized aspects of procedural processes, the result is the system of abstractions which as fictions devolve rapidly in the direction of magic and a superstitious respect for the mere process of judicial machinery. That the mere grinding of the courts and the bustle and roar of legislative machinery has little to do with justice and right is becoming painfully evident, as it is becoming evident that some other basis than mere busy-ness of legal machinery must be found for the respect of the law. The reference must go behind the inductive and procedural aspects of situations to the personalities involved, ultimately to the universal Person from which right and justice get their meaning. But the person that is indicated to the comprehensive intelligence is not the exclusive and dispersive and separatist entity which current legal thought gives a one-to-one correspondence to specific juridical relations. The person of the law is not the natural person. The natural person is a procedural necessity, a creature of practical methodology, and as such it is a practical *maxim* and not a principle; in order to find principle for the maxim which reduces person to atomistic unit, it is necessary to go behind the immediate details of practical situations as embodied in procedural considerations to the element of universality which organizes practical situations into real wholes. The right as 'private' to these specific details, which in reality represents relations among the details, and is therefore a logical implicate of their order, is confused with a supposed inherent quality of each detail taken by itself. It does not seem to disturb this positivistic and naturalistic attitude not to be able to find and produce the supposed quality, even though for this attitude the presence of this quality as fact is the prime necessity to the truth of the contention. Nor is the rationalistic motive dismayed by not being able to guarantee the mystical inner essence of the atomic person of worth even by their favorite method of logic. The person which is found real in situations where rights, duties, justice are found is

Personality or Subject as the law which creates of such situations a whole of ends.

A private right is then an immediate and unprincipled relation within a situation of fact which is cut off from its objective references. Its distinct meaning lies in the fact that privacy is the urge to personification which an incomplete and unsatisfactory situation manifests. The very instability of the situation demands that its integrity as a possible developed right be guaranteed. The assumption that the integrity of right as private can be guaranteed and maintained only by the law, in spite of its confusing guaranty by the law with enforcement by law, is well warranted. In the one case the sanction of law is regarded as reason, in the other as force. And it is the incompleteness and imperfection of private right which makes the continuous appeal to the law for justification and maintenance. It is a confession of inner insufficiency and helplessness and unreality on the part of private interest. Its call upon the law is the demand for public embodiment in the objective whole of Right, and an acknowledgment of its own particularity and unrightness on the part of private right. The insistence on the privateness of right is therefore a confession that adequacy of status has not been attained, and the appeal to the law in the interest of private right is the appeal to an external power which is able to make up what the 'natural' right as private lacks. It is therefore a misapprehension of the real nature of law, or of law as the *nature* of the real. The indisputable truth in the conception of private right is the inevitable reference to a person which the idea of right carries. The privacy of right is a minor function of the personality of right; the recognition that to be ended in a person is its destiny, and that any position short of complete personality means unrealization and failure of the right to objectify in the public whole. *Private property really means personal property*; property appropriated to its end in a person, but with no reference to any specific degree of person; an instrument whose function within the whole of embodied purpose is established and maintained by the principle of individuality. But as private, property is imperfectly individuated; full individuation comes when the degree-form of individuality to which its function is appropriate is indicated by its form; it is fully principled only through its relation to the ultimate

Person. Real, that is, personal property is the origin of law as principle; while law as authority is the origin of private property.

VIII. PRIVACY AS SUGGESTIVE OF CORPOREITY

We thus see that property, taken in its own degree of individuality and hence in so far as it can be regarded *as* principle or *in* principle, becomes the most obvious criterion by which the various real stages of individuality in the full personal form are distinguished. The principle of property states that a given type of instrument is appropriate to a given form of person as a means to the embodiment of a given purpose. There is then a form of property *private* to each of the fully personated forms of individuality; and the vexatious political and economic question of the limits of property rights is just the question as to what form of instrument is appropriate to the full performance of function or fulfillment of purpose by each degree of individuality. The various aspects of the problem of the limitations upon the property right must get discussion later. The aspect of privateness as attaching to property specifies the individuality in its exclusive character, a character below that of the animal organism, as we have seen exemplified in the theory of natural persons. It is the aspect of embodied life that has been responsible for the vast development of detail of technical means in modern times; I mean that the private aspect of property has been the cause of the vast multiplication of instrumentalities through which specific purposes have been fulfilled. But the development has reached the point where the process of specification and multiplication of agencies is obliged to make or invent the specific purposes it is designed to fill, where the mere maintenance of its own movement as abstract process is its real end. This is the reason that the property system is now 'on the defensive' everywhere and is gradually losing its hold on the respect of men. The real question of private property, viz., how much or what degree and extent of property is to be appropriated to a given form or degree of personality, has not yet been met by the comprehensive intelligence which alone can solve it. The purposes that are thus *made* merely to feed the tendency to infinite process, as e. g., the public

'wants' artificially created by advertising, are artificial and mechanical and abstract after the necessities of the process which creates them, and they have been and are the cause of the maladaptation of law to life which is showing itself so dangerous of late. And this maladaptation is peculiarly distressing in the case of property. The law is coming to be conceived popularly as the agency through which property is *opposed* to life, that the law will protect property as against the right of life. Property as the mere satisfaction of want therefore tends toward the infinite repetition of the process which creates the *want*, the hedonistic weakness of every utilitarian system. Thus, for example, the development of specific proprietary rights in isolated things principled with reference to the want they satisfy is demonstrated by modern methods of advertising. Advertising has long passed the point where it served the process of acquainting persons as to appropriate means through which they might express their personal functions, and has become the repetitive process of creating the purpose or want in order that a use may be found for an instrument produced without reference to any natural necessity. The situation is contradictory throughout, and the objective means to life are themselves rendered subjective and detached from all real connections with purpose. Thus the private aspect of property, taken by itself and without reference to the unity of function through which the personality as a whole is expressed, serves as criterion only for the incompletely individuated mechanical system of abstract means, and presupposes a form of individuality even below the organic.

There must, if our definition of property as the criterion of forms of individuality is to be justified, be types of property corresponding to the degrees of individuality. And the justification or legalization of specific types of property, their reduction to the form of law, in these forms will depend upon their being the appropriate embodiment of their respective types or degrees of individuality. We have examined property in its capacity of embodiment of the isolated individual and have called this aspect of it private property. The type which is supposed to be different and antithetic to private property and to which appeal is usually made in criticism of private property is public property, which tends to be regarded as somehow the collective embodiment of the group. This an-

tithesis will however be shown to be unreal, and to rest upon a superficial distinction of aspects of private property. We have seen that the concept of the group has afforded us no relief from the limitations of the isolated atom, especially when it is taken in its pluralized sense as collective. A collection considered as a body never objectifies because its bond of unity is external to its content, its principle of unity is not the law of its nature, but is superimposed. There are no collectivities in nature. The real complement of private property is not public (in the collective sense) but corporate property. Here the difficulty consists in the failure to recognize that real public property is property in full objectivity, property become personal, a stage which it cannot attain so long as it is made to attach to either private persons or to collectivities. Public and collective do not mean the same thing, in fact their main lines of meaning are widely divergent. But property as fully objectified and thus guaranteed as right and legal by the law of its own nature, is corporate property, the form through which alone full individuality is expressed or embodied. The terms personal, public, collective, corporate, must get complete and adequate discrimination before the function of property as real can be defined with precision. It is obvious that the legal distinction between 'real' and 'personal' property, as that depending upon merely utilitarian relations, does not hold as fundamental in this discussion.

IX. PROPERTY AS PUBLIC AND AS COLLECTIVE

Public property, as it seems, is property conceived as the objective counterpart of the collective aspects of persons. It is property supposed to have status without reference to any forms of organization of the persons which it objectifies. This is illustrated by the tendency of legal literature to speak of partially individuated orders of instruments as 'masses' of property. The idea here is clearly quantitative, and the significance of property is a matter primarily of its *amount*. But the principle of quantity is process and real individuality is never reached on the basis of it. Mere quantification as the symbol of movement has nothing in common with growth progress which is characteristic of individuality. Collective property is nothing more nor less than the pluralized and mul-

tiplied aspects of private property, the conception that a given mechanical instrument may have a utility or function by virtue of its physical qualities purely, and without any reference to the possessory relations which the instrument might bear to persons, or to the relations which in nature hold between persons. It is the common fallacy that the nature and character of a thing is modified by its numerical repetition or by its contentual increase in quantum. It is the old idea of property that is owned or at least used and enjoyed alternately and distributively by all, but for which nobody is in any natural or direct way responsible, the assumption that has brought the idea of real property as the corporate instrument of the whole into contempt. It thus separates the utility of the property object from the essential nature of the object and attaches it to the 'will' of the individual, and this attachment persists only so long as the actual using of the object is in process. Possession is thus precarious and requires to be made permanent and fundamental by finding principles for it in ownership, which, as distinguished from possession, seems to imply merely the capacity to hold. But this generalized usability, the transferability of the object from one person to another without affecting any further changes among persons and things, seems to be the basis of meaning for 'public' as thus used. It is therefore the complete abstraction of property objects from their relations to persons and it neglects therefore the 'private' element of property by virtue of which an object is property through the functional and purposive relations which it sustains to persons. And moreover the functional relation to persons that renders an abstract thing a property object is a relation in the nature of things and therefore permanent. This does not necessarily imply that the personal relation of a property object to a *given* person is inalienable, but does raise questions as to the nature and limitations of the transfer of the object among persons. For example, some of the more difficult are, whether one who has no capacity to use a given thing, i. e., no 'will' to realize it as a property object, can be said to be capable of owning the thing. This would again raise a great many other questions as to what things can be inherited. Or, whether there is any justification in nature for mere holding. It would seem that any real property would become *res nullius* by abandonment under such conditions. The

relation which makes a thing a property is permanent to a type of person, from which it is not alienable because the relations which hold the object to the type of person is organic to the whole which embraces the person and the property object in a higher unity. And the type of person here is determined by the capacity to utilize objects and to appropriate them to purposes. It would seem then that one who cannot use an object cannot own it in right, and one who *does not* use an object which he owns renounces his right thereby. As a consequence the personal relation as dynamic and implicating use is constitutional to the unity within which the property and its appropriate person both function as organs of purpose. Thus the idea of property as inhering in a person has nothing to do with the ordinary magical formula of purchase and payment, except, that is, in cases where purchase and payment involve appropriate use; nor with the idea of quantitative equivalence, in terms either of objective or subjective standards, which is usually given to express the meaning of value. Objects of real worth are invaluable, so far as exchange and equivalence are concerned, because of the individual uniqueness and privacy of the function which they perform. They therefore have nothing to do with equivalence nor with the mere desire or will of the person who happens to be in position under positive law to give effect to equivalence or exchange. The object of art, for example, cannot be owned by or be the property of the rich huckster who is able to pay for it; it is the *proprium* of the person with whom it effects natural relations as the embodiment of the outward reach of the person's esthetic nature. But this is defining the person in terms of his universality, hence it does not mean that the object is the private possession of a given person, nor is the property object the matter of the alternative use and possession of *persons* collectively, but the concrete objectification of the unity of all persons to whose nature the object is the appropriate and adequate expression. But this, as we shall see later, is not collective property, but corporate property.

Public property as collective, then, seems to postulate the *alternate* use, enjoyment, etc., of the instruments of purpose. As thus conceived, property is exclusive and absolute in precisely the same sense as that which gets so much criticism from the enemy of private property. The critic has therefore not

seen that he has failed to find the essential contradiction in private property which is just the contradiction implied in the nature of the personality as he has conceived that nature. He has himself accepted exclusiveness and abstractness of the object from the essence of the person, and has attributed value to the object thus abstracted, forgetting that value and worth are qualities of the relation which in nature binds the property object to its personal ground. It is a one-at-a-time and therefore repetitive and abstract relation which for him holds between persons and property objects, consequently the status of the object can be determined by reference alone to its innate and exclusive qualities, hence it as such is not modified by exchange of reference to persons. It is therefore for him the object not of use but of exchange. But what he does not see is that *as* an object of exchange the property object is the mere abstract symbol of the more comprehensive and far-reaching relations that subsist within a larger and vastly more complex whole where specific elements get their reality from and through the unity of the whole. This is the fallacy that is now wrecking our industrial system; the abstract object of exchange is totally divorced from the functions of use and enjoyment, is therefore separated from the personal ground in which values naturally inhere, and has become the abstract empty unit which attempts to maintain itself by multiplication and repetition of itself indefinitely. Hence the extravagant emphasis on distribution. The abstract symbol of value, as the mere object of increase through exchange, has become the end of the practical life. And the assumption that exchange brings about an increase of real good is the ultimate surd of economics. Production, or the providing of a supply of instruments of use, and consumption, as the actual application of instruments of use to their appropriation to ends, have become subordinated to the mere distributive process of exchange, and the result has been the production of that anomaly and monstrosity, the modern business man as the subject of the rights of property involved. A property is a thing appropriated to an end, and not to the mere process which repeats the thing indefinitely as technical means.

Regarding property as collectively held seems to necessitate the invention of a 'justice' which could arrange for an alternate

use of property by exclusive persons. It leads therefore to the competitive race for advantage, and to all the trickery involved in the attempt to invent technical means which will give its possessor a long suit in the game of life. Intelligence in this connection becomes the cunning which can obtain an advantage in advance of other persons, since, as collective, society is maintained on and by a centrifugal principle, and collective property becomes the principle by which everything seeks separation from everything else. Its fundamental assumption, which it shares with the doctrine of private property, is that what one 'has' or uses or enjoys, another cannot have or use or enjoy. Exchange is therefore given an exaggerated importance, since it is the principle by which exclusive persons will alternately have access to the instruments of purpose. This is the meaning or meaninglessness of property in distributive business. It has been remarked how the diversion of the function of property from use to exchange severs the natural connection between the object of use and the person who uses it. It therefore places the whole property system within a complex of abstract and external relations, and leaves the property edifice continually falling to pieces because of its lack of an internal principle of harmony and unity. Hence its recurrent appeals to law and force. It is thus the peculiar field of competition, the striving of persons against each other for the expropriation of each other, and the scramble not for the best things of use but for the most things that can be appropriated to the mere maintenance of the existence of the parties to the struggle. For, since the process is one in which perseverance and endurance are the primary virtues, and since these qualities are themselves sustained by material means, the aspect of material means which acquires value in the struggle is their mere abstract quantity. Hence the greed and grasping at the mere matter of existence and a life devoted to mere indispensables; and the most disappointing thing of all is that the only degree of refinement that comes to the process is that which develops from the finer precision with which the technical instruments are adapted to their deadly purpose of mutual expropriation of persons. Thus it is explicable that the business system, which rests on the abstract principle of exchange alone, should naturally become convinced of the

idea-system which lies at the basis of war, and committed to the means which are capable of the most extensive and most brutal destruction in war.

It is often attempted to avoid these graver consequences of the competitive system, which we have seen to be a necessary consequence of the idea of private property and the collective idea of property by emphasizing the mutual and sharable aspects of things as goods or as instruments of use. And the distinction is made between things that in the using are used up and those that persist in use. In the first class are things, such as food, etc., which obviously cannot be eaten by different persons. Nor can two organisms be so perfectly 'unified,' if we may anticipate the sarcasm of the atomist, as to overcome the hard material and quantitative characters of the immediate necessities of life which rest upon their ultimate fundamental differences. What I eat will not, in general, sustain the life and power of another person. And since society is made up of 'persons' a quantitative distribution of the means to life is inevitable. There must be therefore an allotment of specific things to specific persons, and the distribution should be measured by the supply of things and the 'need' or capacities of the persons. Things are therefore 'shared' and are consumed mutually by the collectivity of persons. In the other case of the goods which are not exhausted in the using, the principle of sharing would imply once more the alternate use by the members of the collective group. Thus in the one case the principle of sharing depends upon the idea of distribution of the goods by partition of the goods, with ultimate consumption in view, and in the other case upon distribution of the goods as permanent units among the collectivity of persons with the view to use as means in production. In the one case there is the dominant idea of material immediate exhaustible value, and in the other mediate but ultimately exhaustible value. These two principles of "means of production" and "wealth" are the ideas upon which the principle of order in society is to be based from the collectivist point of view. This point of view does not differ in principle therefore from the individualist. The ideas refer to means in every case, to means in the one case that are never ended because they by nature anticipate no end and are therefore not ended

but exhausted instead; and in the other case to means that are never ended for the reason that they perpetuate themselves indefinitely in the infinite productive process. They are means that remain technical, means which are means to other means indefinitely. They therefore never become real. There is also the very important consideration, sometimes neglected but often consciously emphasized, that neither consumption nor production are the all-important functions in life. Production, which collectivism tends to emphasize, is nothing more than the infinite process in so far as it does not also imply the law of a rational system of distribution. Nor can any of these processes, particularly as mechanically interpreted in political theory, connect in any vital way with the system of constitutional law which is the spirit and life of society, the creative energy of institution.

The principle of mutuality can therefore be given no importance as law so long as it rests upon the assumption of collectivity as it usually does.

There is therefore from the collectivist point of view no possible ground for a social or political principle of unity for the reason that the collective idea cannot as such be reduced to the form of law. Resting as it does upon the composite character of human unity merely, it must remain superficial just as the composite and agglomerative character of unity does not penetrate to the *legal* nature of things. It assumes the atomist point of view with regard to the questions of human nature and its idea of unity must therefore be that dictated by external characters. It therefore does not include within its purview the aspects of things as *ends*, and as a consequence the real essence of social or human life is overlooked. And as the interests that deal with order are normative interests, interests which seek laws definitive of ends, there is in the collectivist point of view no suggestion of law; neither when the burden is made to rest upon 'equality' as formerly, nor upon 'mutuality' as is the fashion now, and the search for principle may as well be abandoned at one point as another. There is no denying that the attitudes represented by the doctrine of mutuality and sharing are of profound significance, and that their place in the theory of the relations in human life is assured. But that does not yet give them immediate contact

with principle, and what does not have that contact is of no use where insight into future order is imperative as it is in politics and law.

I have referred to the doctrine of mutuality or sharing as an attitude. As such it has its proper place in life, and as such it finds its worst perversions. As an instance of the latter is the attempt to find the property principle in the mental state of good will or charity. It is perhaps true that no competent student of the questions involved would resort openly to such a procedure, but there are evidences that such a point of view as an unconscious background colors the thought of the best minds. This is for the theory of property the fallacy that vitiates much of our strictly 'scientific' knowledge, the presupposition *that objects may be ordered by, and their essential nature known through, states of mind that stand in one-to-one correspondence with them.* It is the very essence of the principle of subjectivity, and as we have seen in so many connections does not give us grounds for the reality of objects as implicating their ends. There is therefore on the question of property and its political and social difficulties no help to be had from the merely 'religious' or 'moral' attitudes. The question of property is one aspect, perhaps the most important, of the question of the objectivity of human experience as that is involved in the principle of individuation, and as such is not a matter of attitudes of mind. And as the principle of objectivity in experience, it is the metaphysical presupposition which must be worked out by logic as a basis for all practical interests. Politics, ethics, religion, law, await therefore the formulation of the metaphysics of property. Property as collective, as it seems, is the proper corollary of the socialized or group theory of human relations. It is a reversion from the higher form of property of modern times as that is expressed in the quality of privacy, and represents the common tendency of criticism to go back to long superseded standards. Collectivist theory has come into vogue because of the mere negative rejection of certain of the more obvious and grossly crude aspects of the theory of private property. But just as private property represents a theory of human order already superseded, namely, individualism, so collective property represents the more primitive order implied in social theory, and goes behind individualist presuppositions to earlier and more prim-

itive presuppositions because of the tendency to seek fixed standards in the past. Collective property thus implies and emphasizes the multiplicity of detail of content in individuality, and will stand for the degree of individuality which is distinguished primarily by the principle of difference. It must remain therefore abstract, formal, 'ideal.' Private property represents the opposite motive which seeks objectivity not in repetitive reproduction of things as details, but in the exclusiveness and separateness of the detail taken singly or in the mass of details taken as homogeneous. The one represents therefore the abstract universal, the other the abstract particular; and while each represents an element in real individuality, neither is adequate to express the law of individuality.

X. PROPERTY AS CORPORATE

There must therefore be found a form of property which stands for full individuality, if property possesses the attributes of real and personal which we have ascribed to it. And if we may follow the lead indicated by the study of property as private and as collective, we may deduce from these attributes as premises the conclusion that property which represents full individuality will be that which is appropriate as means to the fulfillment of the elementary functions of institutional life. There must as the adequate property object be found an actual embodiment of the corporate person, and this we have already hinted at as the property which represents the purposive activities of institutions organized as the corporate representation of law.

This we shall designate as corporate property. Its nature has already been indicated by way of various allusions and at this point it is necessary only to state briefly in some connected form what is its nature and what its acceptance will involve in the way of modifications of thought and practice as concerned with property. As the criterion of individuality, property expresses the embodied unity of masses of factual detail to which as embodied order are to be ascribed originating activities which tend to realize large human purposes. Such activities are those whose ends are not capable either of complete formal definition or of realization through the ordinary means at the disposal of natural persons or collectivities of persons. As

embodiments of the more comprehensive of human motives, these ends are not attainable by private or collective effort, and they are often not cognizable or consciously intended by natural persons. They therefore are at times accomplished by indirection and as a reflex result of the organization of property objects, and established as objectified fact before the minds of particular men are aware of their existence as fact, and thus give rise to values and significances which to the minds of ordinary men seem to have no rationally discoverable basis in human purpose or action. The discovery of these values, and their appropriation to the whole good, is the function of the statesman. It is thus an easy step in interpretation to ascribe them to superhuman or extrahuman agencies, and to accept them as evidences of the presence and operation of higher powers than those of natural things or men; hence the personification of the more comprehensive human institutions. Beyond this step the vast mass of men never pass in the attempt at the rationalization of their experience. This is clearly the basis of the reverential attitude which unthinking practical men take to forces which operate to their advantage, and is responsible for the blind and persistent worship by them of the *status quo* as the dispensation of the divine hand. It is also responsible for the equally blind superstition and self-immolation with which the ignorant accept the consequences of the unknown causes which operate to their disadvantage, and for the attitude of quiescence and resignation with which the masses accept expropriation and oppression. But it is also responsible for the sterility of political thought as it gets expressed in legislation and judicial decision, and indicates in the minds of politicians the profound lack of understanding of the nature of the forces to which they, often honestly, are attempting to give direction. They mistake the nature of the ends in human life because they are not aware of the degree and type of unity of means which are continuously and automatically effective in giving principled meaning to the facts which lie about them. These unities of means effectuate as ends automatically in the absence of conscious direction, and there is no conscious direction because the means at hand are not apprehended as unities. It is therefore easy to understand that the course of events collects about itself a halo of appreciative emotion, or of awe and fear, according as it furthers or

hinders men's interests; whereas it should find some degree of intelligent organization as a cognized and previsioned system of means which carries in itself the ends of human purpose. It is this failure to get the sense of bodies of fact naturally ordered with respect to ends that accounts for the pessimism and fatality and futility which takes possession of men's minds at every critical point in human history. It is the function of politics considered as continuous social creation to make these large institutional forces and motives clearly conscious and deliberately appropriated to ends that are rationally determined.

It is, however, out of no superstitious respect for the forces which shape men's destinies independently of their efforts of thought and action that we emphasize the importance of these necessary tendencies in human life. They are explicable for thought and to some extent controllable by 'will,' otherwise the concept of purpose would be meaningless, and the last word of the human sciences would be the statement of the hard immobility of a necessitated universe. These forces can be understood, and in so far as understood, directed, once the political mind is fully cognizant of its basic problems.¹ The forces that shape man's destinies are the systems of ordered means through which he pursues his ends and these systems of means we have already seen to be the experience of the race as incorporated in institutions. In the study of the institutionalized mind we saw how and to what extent the institutions of life into which man is born "do his thinking" or "make up his mind" for him, in the sense that they determine the problems about which his life must be centered. These institutions think and will in the sense that their presence constitutes a system of fact ordered with reference to an end, and this is as nearly adequate a definition as we could find for thought and will. The *type* of mind, i. e., the universal and objective aspect of mind is therefore institution. These systems of means, as carrying the end in their present form and function, become constitutional to the order of human life, and thus acquire the spontaneity and automaticity or 'author-

¹ The questions of details and specific means of control and direction are questions to be determined by social experimentation, hence questions of practical politics. They are therefore not a part of our purpose here, which is the determination of principle.

ity' of law as such. They therefore are persons, can *act*, and *realize purposes on their own account*, independently of the little purposes of natural men or collections of men as such, and are in fact the means through which both the larger purposes of humanity and those of particular men are defined and executed. Specific embodiments of these constitutional elements of law and purpose are institutions. The function of institution in general has already been discussed. It is the purpose here to outline the nature and characters of institution as principle as it is objectified in the form of property.

It has been already pointed out that institution in its strictly personal aspect takes the corporate form. As we are to regard property as the body of institution, it will be necessary to show that the fully individuated form of property is corporate personal property. To do this it may be best to refer as an example to the modern industrial corporation, although it is to be understood that many and perhaps most of its characters are difficult of justification.¹ But the presence of the actual wrong is often an index to the possible right. One trait of the corporation seems tolerably clear; it performs acts and accomplishes ends which, although the ends of no determinable human being, are yet human ends of a very high order. It is therefore 'irresponsibly' acting² on its own initiative with respect to situations that enhance and enlarge its intent as plan and furnish to it the means to the fulfillment of its ends. Nothing is more obvious than that many of the morally questionable acts which corporations are obliged to do are acts which every individual connected with the corporation would sincerely disown. And yet the status of fact of which the corporation is the essential part requires just that act in order to maintain the ordered set of conditions upon which both the corporation and its environmental objects depend for their existence. We have in this situation the apparent necessity of moral evil. The act is therefore necessary, necessary,

¹ It is in fact the essential wrongness of industrial corporations that sets the problem of the nature of corporate order. But as instances of embodied order as a logical concept they serve our purpose better perhaps because of their moral delinquency.

² It is worth while again calling attention at this point to Aristotle's distinction (*Ethics*, Bk. X) between action and mere movement. On the basis of this distinction the ascription of acts even to inanimate objects does not appear quite ridiculous. It would be worth while for the 'actionist' also to note this distinction with reference to his confusion of action with reaction.

that is, as a logical implicate of given order, and what is necessary can only in a relative sense be called wrong. But the rightness or wrongness of acts in this connection does not directly concern us; our interest is in the constitution of acts. What we want to see is that the act comes as the expression of the corporate body taken as a whole, and that the 'will' involved in this case is nothing else than the order or constitution of the system of fact out of which the act proceeds. This attributes spontaneity to order as such. But this, we have already seen, is also as much as can be said of the will of a natural person, or of any form of person; and it is as much as need be said, since it is a statement of the whole of fact as the systematic completeness or endedness of the unity of fact in practical situations. The autonomy of will therefore is guaranteed in the rational necessity that fact be ordered if it is to be real, that fact be supported in an objective status by relations the overt expression of which is the promulgation of a law. This rational necessity is consequently the authority which guarantees the validity of the law, and constitutes the law the standard or criterion of order for all forms which the fact system may assume. The law is therefore imposed, as a categorical imperative, as the mere postulate of the order of fact out of which it proceeds. The order, as Hume would say, is given with the facts. The corporate organizations of human beings based upon property and having the purpose further to express themselves in other forms of property *are persons as wills*, and wherever there are to be found the characteristics described above there will be a will or a person; provided only that the order of the factual characteristics promulgate itself as a functional contact with another fact system. But this reference of principle to other fact systems is inevitable, innate in the universality of order as the condition of continuity among facts and fact systems, since otherwise there would be no meaning to the growth process, and our principle that personal systems stand always in reference to themselves in another form would mean nothing more than a reference to a collectivity of entities which stand not ordered but arranged in quantitative series.

That corporations do 'have souls' and act on their own initiative, and without regard to the wills of individuals who compose them, and with reference to objects as ends which are

not consciously intended by individuals or of which individuals may not be aware, is mere matter of fact. In determining the types of points of view and of idea-systems of persons engaged in practical concerns, they act in the most significant of ways. And the point to be made emphatic here is that the facts in the case of corporate activity are identical in characteristics throughout with the facts involved in the acts of human individuals; that the facts in both cases constitute will as executive order in precisely the same sense, and that the one is explicable equally with the other on the principle of purpose, when by purpose we mean no more and no less than the effectuality of embodied order as fact. There is, however, for the purposes of practical science, not a great deal of importance to be attached to the psychological theory of will, consequently, the consideration of will or purpose as conscious contributes little or nothing to practical science.¹

What is important in connection with will is that it is a logical implicate of fact systems, is a necessary deduction from the order of facts as that order is itself a necessary deduction from the laws of thought which underlie the existence of consciousness itself. Or, if one prefers, the system of the laws of thought constitutes consciousness. But the will to which we are thus led logically turns out to have little in common with the will of current theory of human relations, or with the traditional political and legal theories of will. The logical necessity of objectivity of will, the necessity of its embodiment as the condition of its reality precludes at once the characters of uniqueness and self-inherence, as it does also the existence of the abstract entitative point out of which acts of will were supposed by traditional theory to issue. The will cannot be explained as the mere point of origin of forces, nor as the point of initiation of purpose. The postulation of origins in connection with will cuts off at once the attributes of authority and spontaneity and hence objectivity, since it is a reference of will to something other than its kind as the principle of its rationality. The position which we have tried to state avoids the mystery of initiation and origins by locating the reality

¹ As we have already seen, it is the assumption of a degree of consciousness which gives to any distinction its importance. That is, consciousness is the factor which is present in all terms of the equation and can consequently be cancelled out. It is the objectivity of fact which we seek and not its inner or specialized reference.

of will in the permanent order of fact-systems, systems whose volitional nature as rationality depends upon the reference of their content to the law of the order of that content itself, and by showing that this order as law has a constitutional relation not only to the fact-system in which it inheres, but also to the environmental fact-systems which in a measure condition the modes through which the law as will expresses itself or works itself out. It is thus that the will as permanent order can be made consistent with the facts of growth, and it is also through this conception that the permanence of will as authoritative and as a permanent condition of respect makes connection with the fluency and sequence of fact involved in acts as the processes through which will realizes or objectifies itself in ends. On the old doctrine of will therefore the phenomena of ordered growth and indeed those of an ordinary act are inexplicable, since it represents a forced unity of permanence and change, and the centrifugal tendency thus implied in the unnatural unity, far from representing the lawful and regular power of will, is precisely the type of the 'wilful' and irrational. All these difficulties are avoided (that is, in so far as the difficulties involved in the very conception of an act are avoidable at all) by recognizing the order of fact-systems as itself a dynamic and creative law. But a corollary of this recognition is the further necessity of attributing will to the order of propertied persons, and of seeing that the order of persons includes forms other than the natural person. Of these forms the corporate industrial and commercial organizations are typical.

Corporate property is then just the body of fact the law of whose organization we described as the individuality in its more personal aspect. In connection with the processes of law we described the functions which express themselves through property forms and the variety of property forms which were appropriate severally to the different modes of functions or purpose. We have also described property masses as the locus or embodiment of will and at the same time as the instruments through which will finds realization; and we have identified the will as the principle of action with the creative and dynamic aspect of order as order becomes the constitutional law for fact-systems. And we have argued that will as thus naturally objectified in fact-systems

of widely differing content and comprehensiveness and type of order, is objective also in the more real sense that it is the universal to which the will of the natural person stands as particular. It is, then, through the rational will that an individual becomes a member of a species, to put it in classificatory terms, or enacts his species, if we put the relation in terms of moral and social ends. This denies to the will of the individual the isolatedness in fact and the irresponsibility in law which comes from regarding it as the point of origin for purposes. Real will is something more objective than the *private* will of the natural person, or is will more completely objectified than the will of the private person. The higher form of will is the corporate personality, and the system which objectifies it is the system of corporate property.

Very few references to fact tendencies of the present should be sufficient to justify these theoretical considerations. Vastly the greater amount of the property of the modern world is held in the form of corporate organizations. The tendency of life itself is to further and more complex organization, and will is both the law of organization and of organizations. That is, will is the law of both inner and outer order. And these tendencies of life as will embody regularly in corporate bodies, that is, ordered forms. This tendency is shown indubitably by the fact that corporation law is perhaps the least definitely settled of any department of law. But the one argument that is most convincing is that the property-body is made the seat of incidence for the responsibility (perhaps one can as yet only say liability) of corporations. And responsibility is the essence of personality as will. These and many other arguments that might be added indicate the general tendency for property to aggregate in every larger organized masses corresponding to the larger and more comprehensive purposes which quite obviously are coming to the fore in human affairs, as, e. g., the international and national co-operative movements of farmers and laborers in which all human relations rest upon property.

But if we accept the tendency to large aggregation of property as the natural objective counterpart of the obvious tendency of human beings to organize into the larger social wholes, we must be prepared for the fact that the emphasis will fall away from the natural person, and will be laid upon

the large corporate wholes. This shift involves fundamental difficulties. Chief among these are connected with the moral and legal assumptions with respect to responsibility. We have taught ourselves to insist upon the personal quality of responsibility, and in doing so have been unquestionably right. Responsibility as the peculiar quality of will, as the obligation through which will rationalizes itself, is indeed the essence of personality, which for our purposes we strongly insist upon. And the principle of personal responsibility comes into mind at once. Whenever wrong has been committed, we attempt to seek out and identify the person whose defect of will is to be connected directly with the wrong. This identification we attempt to effect by analysis of the person's motives or intentions, thus indicating that we are still obsessed with psychological prejudices and the notion of a unique inner essence of spontaneity, in spite of the fact that we know that motives and intents as isolable facts cannot be determined. But while we thus theorize on a basis merely of our traditional presuppositions, the necessities of doing legal justice in the courts and of establishing relations in breaches of social and public order have compelled us to look to the larger situation for the defect of order which is the cause of wrong. Thus a man steals a loaf of bread; we no longer attribute the act to inherent badness or wicked meanness in his will, but look to the industrial situation, say, which through hereditary and environmental circumstances of fact defines and conditions his capacities as a bread-winner, and we may find that the theft is the consequence of those conditions while the man is not fully aware of the situation, just as the necessities of a business corporation lead it to wrong action without the knowledge or consent of any man connected with it. The will in both cases is spontaneous, is the person and is not controlled by the person. Many of the changes in the modern legal idea-system are due to forced recognition that the decisions of the courts must in many cases at least refer not to the individual John Doe but to the social complex in which the John Does live and move and have their being. These changes are a recognition of the objectivity of 'crime' as a condition identifiable with the general looseness of the relations upon which social stability rests, such a condition, for example, as follows war, and they realize that the punishment of crime, or in any case its pre-

vention, is a matter of tightening up the lax places in social relations, rather than of wreaking vengeance or reformation upon either John Doe or the bakery corporation he robs. It is equally important to note that educating or socializing the mind of the criminal is just as illusory. Nearly all punitive methods rest upon the false assumption of the unique will of the individual, and the idea that by doing something to the metaphysical will the individual can be made right. There has been, it is true, a great deal of sentiment about the pernicious wickedness of the environment and a general tendency to excuse the individual, but these are due, we may hope, to the general tendency to exaggerate the importance of new ideas. Anyway, the environment is itself in its constitutional aspects a will, since its ground consists of personal elements in part. The idea of individual responsibility will no doubt always carry a profound meaning, but it need not blind us to the importance of certain impersonal relations of life, nor does the phrase individual responsibility necessarily commit us to the natural as distinct in kind from other individualities. In the case of the man who steals bread, the responsibility is still personal, but the person involved is the corporate order of fact of which the man is only a small part.

We have seen then that insistence upon the personal aspect of responsibility merely involves the investiture of what we have always regarded as impersonal agencies with personality. If we attribute will and responsibility to orders of fact other than natural persons, then, since will and responsibility are the essence of personality, these other orders of fact must themselves be persons. This we have been obliged to recognize from every angle from which we have found it possible to approach the problem, unless we are willing to discuss the question of individuality in terms of abstract dignity, or other merely subjective terms. From the point of view of property, we shall have to say that corporate aggregates of material means acquire a spontaneity directly by virtue of their organization with reference to the end to which they are appropriated as means, independently of the natural persons who may be implicated by the more narrow and immediate relations within the property whole. It is to be remembered that this organization is constitutional *to* the corporate system within which it holds, and constitutive *of* the larger order of

which this system is a part. It is because of the fact that the organization objectifies *outside* the property aggregate that it becomes the ground of law. This spontaneity or 'will' is the basis of the law of real property, and the real law of property is the principle according to which property aggregates are organized with reference to ends. The property law is then the constitutional law of the objective system of fact taken as means, and is immanent within that system. What must be avoided is the assumption that the law as it relates to property consists of a plural number of relations which subsist between abstract 'wills' on the one hand, and abstract material unorganized substances on the other. For, from this point of view, abstract quantity is the differentia of the real aspects of property, and the rights which inhere in the nature of property lose their claim to recognition by law merely upon the question of *how much* property is involved. The important practical matter in this view of the property status is that of determining the *distribution* of property with reference to the various degrees of individuality, and the rules by which the boundaries among the various degrees of purpose may be marked out, since these boundaries determine the distinctions which can be made within the general objectivity of property, hence the types of property which must be recognized in considerations of practice. What we have to accept as the principle of distribution will also determine the limitations of the various forms of property.

XI. CORPORATE PERSONALITY AS INDICATED IN THE LIMITATIONS OF PROPERTY

To this question of the limitations of property we must, by way of conclusion, give some attention, since it contains the essence of principle. We have accepted property as private, as public, and as corporate. And we have said that in so far as property is real it is personal. These terms do not represent classes based upon kinds of things, but are rather principles by which we distinguish degrees of order within the reality as a whole. It is in this sense that we regard property as a principle of individuation. It must therefore show characteristic stages corresponding to the degrees of individuality. In concrete terms, our problem here is to determine the nature

and extent and limits of the forms of property which are personal to the different degrees of individuality. Just what property is *properly* private, or public, or corporate? Once more, it is to be insisted that no answer can be given to these questions in terms of kinds of things. The "ownership of the means of production" is, for example, impossible to determine, since ownership in the ordinary sense does not represent an essential attribute of property, consequently the means of production can never be defined. There is property that is not owned, but, on the contrary, *owns* other properties; property, under certain ascertainable degrees of organization, *is* a person so far as to entitle it to ownership. But this does not specify a kind of things owned or ownable. Again, since property is personal, and thereby implicates will and spontaneity, its productivity is never determinable, since the appropriation of things as means to objects as ends which is what is meant by production, is within the ultimate real, unlimited and infinite, since it means just the inexhaustible possibility implied in creative action. This is the point at which mere movement becomes action.

Private property, in the sense of the forms of property that are appropriate as means to the purposes of the natural person, is, in general, as we have seen, the sum of embodiments of the purposes which are specifically representative of the organization of the natural person. The fact that no purpose is thus specifiable with absolute precision may be neglected for the moment. The use and enjoyment and disposal which may be permitted to the individual man are limited by his capacities, and these capacities are again, in a strictly moral sense, modified and limited by his rights (duties). A man's capacities do not refer then to what he can do, but to what he can *and* may do. But rights are themselves determined by, or rather literally *are*, the objective relations which are presented to the individual as opportunities; consequently no absolute line can be drawn bounding the individual's privacy, since that privacy is, as *proprium*, a matter of objective, i. e., public, relations. Any one of his rights, if pursued however slightly, soon becomes "affected with a public interest," and the practical difficulty is to find the point from which in one direction the reference is all to the individual man and in the other direction to the public body.

So that only the general principle is that that property which the individual alone can best apply or appropriate to the end is distinctly his. This implies an experimental determination of the individual's capacities. And in order to make this principle universal the end intended must be made consistent with the end of the whole or the two must be made to coincide. But while it is impossible to delimit the extent of private property by general principle further than to connect it with the capacity of the individual and the nature of the end, both of which, as Lesbian rules, vary, there are other ways of effecting the necessary control over it in the practical interest. These practical rules all rest on the maxim that *capacity is limited by right*. Merely because I can, as Thales did, monopolize all the olive presses of my country, and thus derive an autocratic extra-political power over my countrymen, is no reason why I should. Such an act cannot be done in a world of right. Nor is it excusable, as modern high-pressure business methods are excused, by the insistence that the other fellow could and should, and, on the general assumptions of utilitarianism, will and does by nature, look out for himself; and if he fails to do so, so the theory holds, I have the right to take advantage of him. This is a clear case of confusion of capacity in the merely technical sense with right. What it fails to see is that right is the objective standard by which the exercise of functions is reduced to order. And the assumption of mere technical capacity, the abstract *can*, is the assumption of disorder, as is demonstrated to the hilt in existing industrial relations. This rule¹ will make radical and far-reaching changes in certain of our fixed modes of thought, but that is precisely the point at which the realization of right and the determination of law by right is to begin. For instance, when right and capacity are distinguished and their natural relations (their relations in fact) are clearly seen, such perversions of the property right as are involved

¹ There is of course nothing novel in the platitude that what one can do is limited by what he ought to do, and the result of the limitation is what one may do. The falsity of the prevailing legal theory is the assumption that what one may do is determinable by what any other person may do, while what the other may do is itself undetermined. The practical result of this nonsense has been, in economic relations, at least, that men have done what they pleased; that is, the utilitarian assumption that every man may do what he will with his own, subject only to the like right of another, is contradictory and cannot be made law, but itself necessitates utter lawlessness.

in inheritance, the unearned increment, monopolistic control, exploitation of natural resources, etc., will call for drastic assertion of the law in the interest of the whole. Already very sweeping powers over the individual's absolute possessory rights are being asserted by the courts. And it will perhaps not much longer be possible, in any case will not be adjudged right, as it still is, for an individual of no pronounced capacity to exercise powers of life and death over whole communities. The reign of law must begin promptly in certain realms, otherwise the realm of property will become chaos.

We may suggest by way of another maxim, that the individual's property-right is limited to the instruments which he can use *best* in fitting his functional capacity into the purposive life of the whole. This implies not only that the instruments and processes which the individual controls shall be directed to the common end, but also that they shall be adjusted to harmony with the instruments and processes controlled by others. As to the practical question what in detail this means, and what specifically it would require of a given individual in a given case, we can once more only appeal to principle. But in this case, the situation being a practical one, the principle indicated is one of method, and is for that reason of first importance. No answer in detail in such a case is possible. And the fact that detailed answers are demanded is a source of the prevalent political futility. The response which comes quite generally to the exposal of a serious social evil is the ironical, "Just what can be done about it?" For situations calling for reconstitution in detail there is only one recourse, viz., the appeal to the principle of experimentation. And our knowledge of political questions is attained in just the same way and by the same means as our knowledge of anything else. The method of all knowledge is experiment, and experiment is the key to political knowledge. Only, since in politics we are dealing with ends primarily, and with ends in the main prior to their realization, experiment takes the ideal form and appears as speculation. Speculation is experimentation with facts previously to their full actualization, and is the process through which the actualization of purpose into fact is controlled. Political experiment is therefore the process of actualizing fact as right, in the objective sense the *doing* of justice, while in the sense in which political experi-

ment is a process in thought "the administration of justice is the determination of what is just." In the vexed questions of detail which arise from the necessity of limiting private property and the expression of capacity, the general answer is that they should be met and solved by experiment. Experiment is therefore the essential method of legislation in so far as legislation has to do with specific questions. But the primary function of legislation is speculation and consists in the formulation of principle. Legislation with regard to detail is the function of the courts, and no more hopeless failure of modern government is imaginable than that due to the attempt of legislatures to make law for specific ills. This is the source of class legislation.

Since therefore the essential character of the individual in its private aspects is the negative one of exclusiveness, the law which has to do with the form of that individuality as objectified in property will be a principle expressing its limitations. Property, we have seen, is the objective aspect of the individual's capacity; but the objective aspect of the individuality is principled by his personal essence as Right; and right is conditioned upon objective opportunity; then the employment of the *technical* capacity of the individual is limited by his rights; and since his rights express his functional relations to the social whole, the determinant of right is the whole good. But the social or juridical whole, the whole as law, stands to the individual as ultimate end, in which the individual is a detail of means. The process of appropriation of detail to the whole, since the whole *as* a whole is not recognizable as definitely formulated principle, is the process of experimentation, or, in its aspect as knowledge, speculation. The ultimate political obligation, as is true of all obligation, is the obligation *to think*.

The same matters of principle apply also to property considered as collective or public. It is repeated that the term public considered as synonymous with collective refers to the semi-popular use. The real meaning of public is objective, and is the essential nature of the reality we have designated as corporate. This aggregative use of the term collective is responsible for much of the difficulty surrounding the discussion of public questions in the French literature of the subject, a difficulty, which however does not destroy the great

value of that literature. We have seen that the emphasis upon the collective or 'social' aspect of property abstracts from the real nature of property the character of utility, and we have criticised this notion of abstracted utility as having no necessary contact with real property. The implication of abstract utility is contained in the *alternate* use which the collective idea involves, and this repetitive and processional view of function involves treating function as an abstract mathematical relation. This we saw was clearly indicated in the emphasis put upon the transfer and exchange of property, which, according to our principle, severs property from its essential aspect of personality—depersonalizes property to the status of an abstract and unco-ordinated material. And what is thus abstract and mere material is not the *proprium* of personality. The objectivity of personality is not matter, but body. The limits upon collective property are therefore extremely closely drawn. The contradiction which it harbors is shown in the fact that it has appeared as a natural evolution from the idea of private property, as private property was conceived by individualistic and utilitarian theories, where the essence of the right of property is the power to exclude others from possessory relations. It is a historic-logical consequence of individualism. That is, the collective idea is a logical necessity of the atomism from which the doctrine of private property comes, and was suggested in our first chapter as the pluralization of the abstract unit in the attempt to give ground to the idea of growth as abstract movement in the real. It is thus full of logical contradictions and is impossible as a speculative or experimental principle, and consequently of no use as a constitutional principle for a social order.

And yet there is a certain kind of utility significance attaching to property as collective, in spite of its patent logical weaknesses. Reverting to our distinction of the two kinds of property as that which is used up and that which persists in use, we have to remark here that the former is the indispensable in the Aristotelian sense, and is not of consequence as a political principle, i. e., as a principle of social order. The question of mere food, or in general, of the satisfaction of wants, or the processes of acquiring food or satisfying wants, as matters of principle, can never be important. It can of course be invested with a sort of theoretical consequence by

considering the 'indispensable' as a limit to real utility, but it can have no constitutional status in the order of life taken as a whole. Yet the transfer and alternate use and exchange of mere 'indispensables' has created the modern business system, and has decreed that its main emphasis shall fall upon the distribution of goods as against their production or consumption. Thus as the practical obverse of the collective idea, and as logically necessitated by it, we have the distributive idea, and it is this matter of mere distribution of the 'indispensables' which is made of first consequence; yet the distribution of goods is evidently a pressing question only because of the faulty organization of the creative or productive functions. Aristotle's idea is the correct one here, that the mere indispensable matters of distribution and consumption of goods, since they refer primarily to goods that are exhausted in use, should be settled once for all in the *organization of the creative or productive agencies of life*. The question of real property in its strictly utilitarian sense is a question primarily of those types of goods which persist as permanent instruments of purpose, while the goods which merely satisfy wants are not property in any real sense of the term; since they can be only temporarily and not fundamentally related to the person. Property as permanent instruments of purpose implies therefore real use by *different persons*, and it is this fact which suggests its collective character. But the collective idea here is one not of aggregation or distribution, but one of permanent organization independent of the privacy of persons, which gives to such property a personality of its own, and which makes the alternate use as back-an-forth transfer impossible. Thus such property cannot be individually owned. It is therefore in its special reference to goods which are not 'real' property that the collective idea is faulty; the personality cannot be really represented by the objective counterparts of its mere wants, and human life is not sustained in reality by the instruments which continuously disappear, by the 'goods' that are *exhausted* in their appropriation to the person.

It will be a great day for human order when it is realized that alternate utility and transfer and exchange are not functions of the real personality. They have attained a semblance of status because of the failure to find for the activities of life the law which is constitutional to life.

Real property as personal is then corporate property, the *proprium* of the fully individuated person. It is 'public' or objective property which stands as the embodiment of the whole. In its static aspect it is wealth and capital as the fixed source of sustenance to the productive processes. In its dynamic aspect it is the application of the capacity of the person to the creative or productive processes of reconstitution of the order of the whole—labor. The synthesis of these static and dynamic factors is Law—the immanent principle of Order. The discussion of the limitations of corporate property will have to do with the perversion and distortion of these fundamental motives in the whole. The perversion of the static aspect of property under the impulse to possess has created the monstrous institution of ownership. This implies the possibility of withdrawing capital from real use for the purpose of enjoyment or of satisfaction of 'will' without action. It is therefore obvious that the mere owner is an interloper and the result of error in principle of organization. There is no real personal function that corresponds to ownership, consequently *the discussion as to the duties of owners is futile*. The only duty connected in any way with ownership is that of the whole constitutionally and by principle to abolish the class of the individuals who merely 'hold' by reordering the possessory, i. e., the use-relations of property objects with some degree of closeness of reference to the end. Ownership, considered as the point of incidence of a function, or as the principle of appropriation of an instrument to an end, is, as a matter of control in the interest of the whole, a *prerogative of the whole*. But, as we have shown, both the ideas of ownership and possession are easily dispensable the moment that property questions are viewed from the point of view of their principle. The 'capitalist' is therefore not the idle owner who comes into possession of powers of control and even of abuse of property, but the person who understands the organization of static wealth so as to furnish the necessary permanence and dependableness and extent of sustenance to the order as a whole. But the very fact that his function is thus determined as use of property in the interest of the ends of the whole, places rather narrow and perhaps absolute limits on his right to control and dispose. In fact his function designates the capitalist as a person in whose hand is the instrument which

represents the matter of the public good, and it limits his freedom by imposing the necessity to adapt the matter of the good to the form of the good as presented by the dynamic element of labor and to adapt matter and form to the whole end. The very nature of his function and the nature of the instrument he handles therefore impose limitations upon his will and show him that his duty or right is the fixed system of relations in which he stands to other elements in the order as a whole. That is, his function is *public*. The capitalist then is to be bred out of existence like the mere distributor if he is to be the ultimate owner; in his place there is to be put the idea of the static matter of the good as the element of permanence and dependableness and stability which is to guarantee the continuance of the order of life as the sum of the conditions of freedom.

In the ultimate corporation, then, property as the generalized body of the good, as the ultimate synthesis and order of goods, is an essential because a constitutional element. The statement of its function in this capacity is the promulgation of constitutional law, which in the aspect of its comprehensiveness appears as the genus of which all other forms of law are species. But the mere statement of the function of property as capital implicates at once another element. This is the soul of dynamic purpose in the absence of which the permanence and stability of capital would become mere stagnation. We have divested capital of its supposed traditional source of energy by eliminating the owner. Traditional theory infuses life into capital by assuming that it will be put to work by the force of the owner's desire for profit, etc. But the simplest observation will show that the desire for profit as well as all other desires are as such rendered irrational by the very necessities of their definition and thus incapable of initiating energy. Moreover, since ownership is conceived universally as the power to enjoy and control, which are primarily passive, it would not tend to initiate the using of its object. That is, the desire for profit inevitably, on the traditional theory, in the long run gives way to the desire for enjoyment, and the desire for enjoyment is essentially quiescent in its effect. There are very few cases where the supposed desire for profit in so far as it might be indicated in vigorous activity has survived the first generation where acquisition began to be large or

extensive, and this seems to show that the desire for profit is not the motive to acquisition of capital. The acquisition of capital comes by indirection from the whole good and as a by-product of the pursuit of creative purposes, the 'desire' to effectuate a purpose as an end. But this is not desire. It comes therefore from the constitutional tendency of the intelligence (what the social psychologists miscall the instinct of construction) in its effort to end a purpose in its appropriate object. The object as such, as static capital, is not the aim of the actor, and when made the aim results in miscarriage of the purpose. Capital is therefore not stimulated to production by the desire for profit nor by the desire for anything else; production is not the result of any state of mind. The production of objects as property is the reflex effect of the operation of purposes in a large and superindividual way, and is directed by the "organism as a whole."

The dynamic constitutional principle of human order is then *work*. This the economists have abstracted into the form of 'labor.' But from the economic point of view labor is itself misconceived in its nature, and is treated as a good, a 'commodity' whose value and dignity are determined within the processes of exchange, as quantitatively symbolized by so much capital or wages. Considering the unreality of the whole scheme of transfer and exchange such an interpretation of fact is pathetic. It is an interpretation based altogether upon the conception of property in that form of it which is exhausted in the using, one which attempts to elevate the Aristotelian 'indispensable' to the position where it becomes a constitutional principle. It is thus the grossest form of immediatism and materialism. The attempt to treat labor as property in this sense is deserving of no consideration whatever; and the fact that it is so treated in industrial practice is due in large part to the utter futility of the so-called science which thus undertakes to reduce it to mechanism. Labor as something to sell in exchange for so much of other goods I shall therefore leave to the disingenuous and inane futility of the economic mind.

The real function of labor and its real nature have already been indicated. It is the active creative capacity which, when employed by, applied to, capital, it should be, effects a purpose into its end. Once ended, the purpose is abandoned as fulfilled

and its objectification in the concrete is turned over as an element in the permanent public stock of uses hardened into instruments. That is, it becomes so much capital. But labor is the living power of the end which, subjectively and speculatively transforms irresponsible outbursts of impulse and instinct into purposes—ends prevised in schema; and, objectively, converts a mere repetitive process into a reproductive progress of growth and on into a stable object of value. It is the creative function and is essentially free as ordered by its necessary reference to the end. It therefore carries implications of constitutional power and right, and its 'due' then becomes the legislative function which out of propertied materials creates the order of the real. In this aspect it is identified with the element of capital as the energy which ends itself in capital, and the relation of 'capital' to 'labor' becomes the law of the unity of ordered life.

Corporate property is then the *proprium* of the whole. It is property in its universal aspect, and becomes the criterion of the various forms of individuality, the principle of individuation. The real essence of property is thus discovered in its corporate nature, by virtue of which it becomes with Person the two aspects of the law of the whole. In the constitution of the whole, then, property as static aspect is Body. The dynamic aspect of the whole, the whole effecting itself as will or law, is contract.

CHAPTER IX

CONTRACT AS THE PRINCIPLE OF CORPORATE ORGANIZATION

No idea perhaps has had a more various or more profound effect upon the practical life of man than that of contract. In some one of its meanings or another it has in modern times been the primary notion by which human relationships have been defined and established, and it has perhaps in early history been one of the links that have bound man to his earthly governments and kings and to his gods. It is essentially and *prima facie* the notion of the ground upon which human beings get organized into groups of all sorts, and as a large logical basis for such relations is capable of many different shades of meaning. It will perhaps not be necessary to go into the details of meaning which the term has had in its development, since its primary meaning in contemporary life is legal or political. But since the distinction between the legal or juridical and the political is not clearly drawn, and perhaps not definable with complete precision, we shall have to deal with that difficult field which lies in the rather vague margin between the boundaries of the clearly defined practical sciences. From this necessity there will be derived certain advantages, chief among which is that it will permit us to refer to certain facts without involving any more than is unavoidable the peculiar face put upon the facts by each of the sciences for its own peculiar purposes. There is of course a corresponding disadvantage in that language has grown up in its vocabulary and its shadings of color under the influences of the purposes that dominate the special interests which are severally represented by the social or practical sciences. But the facts are there, and can be described in terms which will not necessarily raise all the prepossessions of the sciences which deal with them in special ways. And these facts can perhaps best be taken in their original and immediate form before they assume

political or legal complications. By this I do not mean to refer to the hypothetical primitive ground of fact, but shall assume that such facts as scientific purpose may require may be found in the common dealings of men with each other in the processes of making a living and providing for the minimum of comfort, ease and leisure, and the activity which makes living worth while in the life of the present. The main field of such activity, where the facts of life are not yet reduced to law, is business or industry; but the fact that industrial or business relations are grossly exaggerated in importance both in fact and in theory renders them less useful for many purposes than other sorts of relation, as e. g., the relations involved in such interests as recreation, art, religion, etc., which can be discussed without raising a troupe of prejudices such as that which is coming to be the special difficulty of industrial discussion.

I. THE LEGAL ASPECT OF CONTRACT

When the nature of such relations is closely examined there appear two or three elements that seem to be fundamental in the meaning of contract. The conception seems to take for granted the naturalness of and necessity for some kind of composition of individual forces and interests which it also seems to presuppose as naturally divergent. It also seems to refer to the methods by which men are drawn together and to the consequences that accrue to them, both as individuals and as groups, as a consequence of the contractual tie. This, I suppose, is the basis of the legal meaning of the term. Some types of method by which men overcome the sharpness of their physical separateness, and some of the consequences of the convergence of interests which ensues, are 'right' and others are 'wrong.' These terms and the modes of action to which they refer, are perhaps implicit and automatic in established custom, but when once questioned will acquire the juridical twist, which indicates that methods and consequences are to be measured by definite standards that are recognized and unquestioned. In fact, these standards, however they may themselves have been set up, become, by the fact of having been set up or instituted, the final standard behind which the purely juridical interest does not seek to go. Thus standards them-

selves become accepted as pure data, which gives to law the claim of inevitableness. And this fact is responsible for the special peculiarities of the law when it is considered as a form of scientific inquiry, and indicates the final assumption of authoritativeness of the law accepted by the science as a basis beyond which it has no occasion or interest to push its inquiry. The 'human nature' which is the ultimate point of reference for all institutions, whether practical instruments of life and action or logical instruments of thought, is not, as it seems, accepted as the ground of the science of the law as it stands, but becomes the special field of metaphysics as the common ground of jurisprudence, ethics, politics and esthetics in their analytical and critical aspects. The result is that the law appears as a positive, or one might say, a natural science, which not only neglects, but often consciously flouts philosophy and its norms. But 'right' and 'wrong' as applying to methods and consequences of association, may, besides the strictly legal, take the implications of ethical inquiry, in which the matter-of-fact standard accepted by the law gives way for a standard determined in imagination upon a basis of what present tendencies of fact indicate will be necessary standards for the future. That is, morality demands of the law that it be something more than a description of the past considered as an inflexible regulator of the present. It asks for *ideal* direction. And, just as the law with its accepted standards implies the elementary human traits which are commonly lumped together under the name of habits with their fixity, so does the ethical or moral interest imply the spontaneity of the image-forming trait which adapts present fact to its possible modified forms as realized in the future. If the term legal is to be used to refer to the positive aspects of human relations merely, then we may indicate the positive characters along with the normative, as moral considerations demand, by the term juridical.

It is between these two aspects of the idea of contract, that of fixity and precedent as presupposed by the law and that of process and creativeness as implied in moral experience that we have all the difficulties and seeming contradictions between the notions of stability and movement in social life which we usually refer to as the problem of ordered progress. These opposing tendencies of meaning are present in contract, which

on the one hand originally implies a bond, a rigid fixing and prescription of acts by reference to established formulae, and, on the other, the laying down of a ground from which free action may proceed. It thus implicates the idea of restraint, the forbidding the agent to go beyond certain limits, and at the same time commands positive action within these limits. At the same time contract, in its modern form at least, also implies, when stated in subjective terms, the coming together of wills that are free, and, as expressed objectively, the establishment of conditions that will guarantee the fuller freedom of the parties who bind themselves. It thus seems to carry contradictory implications. The contradiction is not only to be found in our attempts at thought about human association, but seems embedded in the nature of things. It is then universal and a question of metaphysics, and one for which a final answer cannot be expected; if by a final answer we mean such a solution as will effect a static harmony of the two opposing motives.

Whether this situation indicates an essential incompatibility between legal right and moral good in their metaphysical aspects, it is not here the purpose to inquire. There does seem, however, to be a glaring inconsistency between the practical operation of the two agencies when ends which are made mandatory by what are generally accepted as moral principles are prohibited from execution by the law. It suggests that what is administered as the law is a very imperfect representative of the real. It is at least clear that the law, so far as it accepts uncritically its standards as justified in their being set up, can make very little contribution to order of any other than a static sort; and, as such, an order does not provide adequate outlet and expression for certain elements of human nature. Law therefore, which is dependent for its acceptance and consequently its sanction upon the moral spontaneity of the race, involves that spontaneity in its structure only incidentally. Legal right remains therefore to be grounded in moral right. The law will consequently fail of its natural sanction in the assent of men, and such a fixed order as it presupposes will be at constant variance with the moral urge of life, and can maintain itself only by means of force. But force can neither establish nor maintain anything as permanent in the cultural life. That the idea of force is at the bottom of legal thought

appears very clearly in the notion of contract, where the final test is the authority to compel satisfaction by contracting parties in the fulfillment of the terms of the contract.

But at this point we are in conflict with another of the fundamental assumed meanings of contract. It is equally generally accepted by another principle of law that contracting parties must be free, that there must be a "real meeting of wills." But a free will which acknowledges itself bound by an external power which may compel it is in a rather anomalous situation. The same presuppositions define freedom as the absence of conditions of constraint, and yet assumes freedom the product of a will which is under the necessity of accepting from another source than itself the instrument to its own expression. Freedom of contract therefore negates will, since will is the completion of an end present in an existent situation. This is substantiated by the obvious psychological fact that the instrument of expression of will is simply the object of action passed into another stage of its own development. And this means finally that the instrument of will is merely the expressed will, the will as realized in its object. But if such is the relation of will to its object, how the object could be taken by an external force and applied to the will, or how the will could be made or forced to adapt itself to the object, are questions without meaning. They are contradictory because they imply a separate and independent existence of the will and its object. They are further vicious because they assume that will and its object can be brought together by external forces. But the whole confused mass of thought is a result of the failure to see and maintain the real continuity between will and its object. The assumption of a will apart from its object is what gives a semblance of meaning to discussion of the real will in the association of persons, whereas all that the idea of the will of a group can mean, or all for which there are any facts as guaranty, is just the sum of tendencies to action which develop in the group, and this is merely a way of saying in abstract terms what could be put concretely by describing the facts into which group activities normally lead. We thus avoid hiding behind tendency. But all that will means in any case is simply a situation of fact ordered dynamically with respect to an end. So to speak of a will being compelled is to speak of a fact being created; not brought through change

from preceding fact as cause, but created *aus blauem Himmel*. Will is the fact which appears upon the attainment of a given degree and type of order in fact; but no new fact is created, it is merely the substantiation of a quality which has been in its elements present all along, but which comes into being as the unity of those elements upon the occasion of the assumption of a given degree of order in the facts among which the qualitative elements occur.

II. CONTRACT AND FREE WILL

So the question of will as freedom of assent in law and politics and religion is confused and full of contradictions because of the imperfect understanding of the facts of will which it implies. Will is simply an *order* of fact, fact organized as an element within another order of fact, and the spontaneity of will refers to the growth relations between the two orders. These growth relations can best be stated as relations of means and end, in that such statement puts emphasis upon the correlative nature of the relation between the two orders of fact. The relation of correlativeness states the indifference with which the two orders may refer to each other, the fact that neither of the orders as terms of the relation has, so far, specific importance. An order of fact grows into another order of fact as the cumulative form of its previous stages; or fact as means becomes fact as end; organized in the sense of means its meaning includes an element of reference to another and further organization, but the further organization is an organization of itself. Fixity is attributed to growth by the ordinary conception in the assumption that temporal precedence of one fact order involves logical priority or esthetic primacy. A different purpose, however, would or might reverse the direction of reference, i. e., means and ends may, do, as a matter of fact, exchange positions. The means then is the end, and becoming so, growth, will, spontaneity, all refer to relations among orders of fact which represent systems of degrees and directions of reference. This, as we have seen, is the real meaning of reproduction; it implies a cumulative growth through series of degrees, and gets its 'individual' abstractness from the neglect of the order of fact and the severing of one degree from the unity of the whole. Spon-

taneity and freedom, etc., can be discussed in their metaphysical uniqueness precisely because they have been stripped to the bone of mere repetitiveness and isolatedness, whereas when considered as growth phenomena of reproductive creation the precedence of the terms involved is indifferent, and time relations are, as infinite, negligible. As a growth relation we can say indifferently that the oak creates the acorn or the acorn the oak. Freedom then is self-reference, which is objective, but not unique. These matters can then be argued about indefinitely just because the assumption made with reference to them frees the arguers from any reference to common fact, on the ground of which they would be obliged to reach agreement. Contract, as the meeting of wills, we are preparing to say, is the natural process of interests of different persons converging upon common ends. It is therefore 'free' in that it represents the tendencies inherent in interests to synthesize with each other and thus become purposes in intending ends.

These two aspects of will, representing both assertion and denial of freedom, seem to exhaust the fundamental characters of will recognized by legal theory. Both are fallacious, or are only partially true, because they rest upon no solid basis of psychological fact. Or, in so far as they have appeal to psychological analysis, they suffer from a vicious distinction among mental facts which sets off these facts into classes of different kinds. Perhaps the most venerable of the distinctions of mental fact classifies them into subjective and objective; or in practical terms, the distinction is really one between thought and will. And the development to which the 'subjective' facts have attained in the sciences and arts which deal with values has been phenomenal and has become the very ground of civilization. The specialization of religious and moral and esthetic values has been one of the chief cultural results of modern times. How much it owes to developmental influences wielded by Christianity through the middle ages would be difficult to say. But in any case the discovery of the value aspect of fact and its isolation from its material basis made necessary for purposes of descriptive understanding resulted in the setting off of the 'spiritual' from the 'worldly,' the subjective from the objective. But, like all devices of convenience, the tool becomes so closely associated with the fin-

ished product that there is danger of identifying them, or if their difference is made a conscious motive they tend to lose all ties of relation and association. And the latter is what happened in the distinction which was made between immediate and mediate values in the period of the middle ages and was accepted without criticism by modern times. The subjective facts of spirit, the rights, duties, responsibilities, privileges, which get their meaning in more remote value relations, took on an aspect which found their real positive nature in their difference from values of a more immediate sort, such as the material and instrumental means to the political and the economic life. These ideas therefore tended to retreat from any connection with immediate life, and to assume a substantial and metaphysical being independent of any relations with immediate fact as the ground of common experience. The 'internality' then of the feelings, which are the only facts that have, immediately, at least, no definite external and common object, becomes the sphere and place of what is real, and will come to be identified with just those feelings whose objects are most remote from common, i. e., universal, experience. Then the separatism of individualism became the dominant point of view, and the practical problem how to bring together in any degree of harmony the assumed essentially independent and isolated units of will became all important. Contract thus becomes a question of the invention of elaborate machinery through which the wills of men could "come together."

The essential problem to be met then is, given a plurality of severed absolutes each without necessary connection beyond itself, not merely how to get these entities together, but how to get them together in a way that would still leave some valid meaning for personal obligation, while obligation *as personal* is taken to represent the freedom, spontaneity, uniqueness, exclusiveness, completeness, etc., which have been used to refer to the unity and effectiveness of order within the separate individual. The old legalistic method of making contract binding by the reference to external formula carried too plainly the tendency of the law to fiction and to a supposed external authority as force, the power to compel, at a time when the meaning of human relations was beginning to appear as revolving about the idea of assent. Thus obligation

as a sanction of law, and force, became opposed conceptions. Obligation which *cannot* be evaded or avoided, it was seen, is not obligation, but coercion, the phenomenon which has always been most hateful to man's mind perhaps because of its contradiction with immediate feeling as the sense of spontaneity.

It will be useful, however, in the discussion of contract as involving free assent, to state once more the facts of will and the relations involved in the assent of will.

III. CONTRACT IN THE TECHNICAL LEGAL SENSE

There may be some advantage at this point, by way of an approach to the facts of will, in examining the legal theory of contract, and in referring to statements as contained in the books. Pollock¹ in stating the general nature of the situation within which contract occurs, says that it is necessary that the "persons have a distinct intention, and the intention of both or all of them is the same. . . . They must be aware that their intentions agree . . . they must communicate them to one another . . . the scope of the intention is material . . . directed to legal consequences . . . where legal right and duties are created. . . ." Again, in a case in trade, "The buyer means to become the owner of the goods, and the seller to become his creditor for the price, and this is what gives the agreement its legal character." "When two or more persons concur in expressing a common intention so that rights or duties are thereby determined, this is an agreement" (p. 2). Within this general situation which is called an agreement something more specific is required, since "in the case of a contract something remains to be done by one or by each of the parties, which the other has or will have a right to call upon him to do. When one man has a peculiar right . . . to control another man's actions by calling upon him to do or forbear some particular thing, there is said to be an obligation between them. . . . A contract accordingly is an agreement which produces an obligation" (p. 5). The common intention has this peculiar character, "that it contemplates future performance or performances to which one or each of

¹ *Principles of Contract*, London, 1878, 2nd edition.

them is to be bound. On the side of the party so bound the expression of this intention is accordingly nothing else than an undertaking to perform the thing he is bound to—in other words, a promise. This is the specific mark of contract which we sought” (p. 5). Similarly, Holland¹ gives six ‘elements’ of contract as follows: “i. several parties; ii. a two-sided act by which they express their agreement; iii. a matter agreed upon which is both possible and legal; iv. is of a nature to produce a legally binding result; v. and such a result as affects the relation of the parties one to another; also vi. very generally, either a solemn form, or some fact which affords a motive for the agreement.” This is followed by a discussion of ‘promisor’ and ‘promisee,’ ‘offer’ and ‘acceptance,’ etc., involving rather elaborate distinctions.

These quotations show quite definitely the types of attitude of mind which get expression in the prevailing processes of action as contemplated by law. What the jurist has in mind in either the case of an agreement or that of contract is, first, a situation made up of, or at least that can be simplified to, a bilateral arrangement consisting of two parties; second, the intervening between these of relations, which have essentially legal consequences primarily only for the parties concerned and only incidentally for third parties; thirdly, these consequences are such as involve the property or the freedom of the two persons who are the immediate parties to the arrangement; fourthly, the condition in which the parties are placed is, so far as the arrangement itself is concerned, a limitation upon the action of one or both parties (even though it may be designed to and does actually increase the freedom of both in other connections); fifthly, while contract implies obligation, the obligation which contract creates or rests upon is the peculiar implicate of individualistic theory, and has no relation to the responsibility of corporate persons which we found to be the creative source of law. It will be useful to look into each of these points separately and in order.

In the first of these, the assumption is pretty clear that contract is an act expressing the consent of natural persons only, and impersonal objects, while implicated, are of very secondary importance. It is hence an artifice and a convention,

¹ *Jurisprudence*, New York and London, 1900, Ed. 9, p. 252.

can be made and unmade at will (by further agreement of the parties involved or by the law under certain conditions) and has thus no permanent relation to the underlying principle of justice which as universal is supposed to be the ground of such rights as the contract involves. This is clear from the fact that a contract requires the 'acceptance' of a 'proposal' in the form of a deliberate and conscious assent to it; and that the 'wills' involved are subjective is indicated by the fact that the assent must in general be attested by some specific formal act. That is, a contract can be evidenced only as the act of a specific person, and the specific person which the legal theory has in mind is the natural person. The complexity of the system of rights that arises from the extension of the contractual arrangement is accordingly due to the increase in the number of parties involved, although on the assumption none of these rights can be understood until they are isolated and exactly defined as the will of a concrete natural person. As thus defined these rights are transferable in a great variety of ways, and the result of the attempt to understand a contractual situation by this analytic method is the detachment of the right from its inherence in a person. The right has become the abstract universal in that it is applicable to every instance of a standardized situation, which is to say that it is taken as a mere particular in its formal or quantitative aspect by virtue of which it merely occupies a place within a system, which place may as well be occupied by any other such particular. Thus all distinctive individuality, all of the uniqueness which belongs to right by virtue of its connection with a person is lost, and the right conceived of as the differentia of the natural person merely depersonalizes the right and reduces it to the status of a transferable 'good.' It is in this sense that right is often described as a claim representing an interest. But an interest that is identifiable with a right must be the interest of the universality of the person, becomes a purpose and has no longer a private reference, hence the interest of higher forms of individuality than that of natural persons. Right as claim or interest is, then, a common or, when conceived as transferable, a corporate interest, and takes on the universality of purpose, and thus cannot be the attribute of a natural person. The proper analysis of the parties to a contract will not therefore show merely the

multiplication of the 'elements' or atoms within the contract, but will indicate that with increased complication the *nature* of the party to the contract changes, and that the full understanding of contract relations will involve the discovery of the principle which binds the various parties into a corporate body with a common individuality. The discreteness of individual men must no doubt be assumed for the practical exigencies of adjudication of concrete situations so long, at least, as the situations are simple and comprehend few difference relations, but in this procedure it must be borne in mind that it is *distributive* justice that is pursued, that is, justice as it would be interpreted in terms of the isolated individual *if the constitutive principle of justice were known*, whereas in legal and political theory the thing to be made known and established is just the question of what is the constitutive principle of justice. "The administration of justice is the determination of what is just." That is, *in law*, where, if anywhere, the universal in its constitutive capacity is required to be found, it is just the principle upon which the distributive aspects of legal justice depends that is in question. And, even if we look at the principle of justice as one derived from series of these distributive acts, what must be kept in mind is that the derivation is made from the *situations* into which men are thrown and not from the assumed inherent nature of men taken in isolation from the other aspects of the situation, nor from the interests of men so conceived. The derivation of justice is then the determination of the characters of personalities as personalities function with reference to each other and to objective circumstances in civil and legal relations.

The question of the number and nature of the parties to a contract leads inevitably to a definition of the personality, and it is submitted, to that definition of the personality which finds its differentia outside the natural person. The essences of the personality involved in right accordingly must be found fulfilled in a form or degree of personality more expansive and inclusive in nature than that of the natural person. It is this necessity for the extension of the complex of legal relations in a wider synthesis that gives rise to the mass of questions with reference to 'third' parties. Our second point above states that on the generally accepted theory the relations of third parties in contracts are incidental, and get their

explanation automatically through the process of simplification of the relations between the principles. Much of the difficulty of the question as to whether the *vinculum juris* of contract does in any way bind persons other than the principals is due to the assumption that only natural persons can carry obligation. This point will be taken up later. Here our interest lies in the question as to how many and what persons are implicated in a situation principled by the contractual tie, and the discussion will undertake to stick to the facts as disclosed by the analysis of such situations. It will appear that it is not necessary to go beyond the limits of popular discussion for a fair understanding of the facts, since the necessary analyses have been made by the courts in the adjudication of the very difficult cases that have arisen out of the extension of the contractual relation to include the modern forms of corporate person. In these cases of late a quite vociferous if not very articulate claim has been made in the interest of the 'public' as a party to all contracts. And the principle seems to be in a fair way to universal or at least popular acceptance, that the right of the public should supersede that of the immediate parties to the contract; in fact it is to be recognized that the public is a party to all contracts, and that where its rights are infringed the contract is void.¹ This is seen especially in cases involving utilities, such as water, gas, and street railway corporations, where the law has in the interest of the public undertaken to use strict regulatory measures. In a recent finding of the coal commission there was an approach to a recognition of the fact that the 'contract' involved was between the miners' organization and the employers' organizations on the one hand and the 'American public' on the other. The fact that 'fault' is so difficult to find in such cases is due to the inevitable tendency to look for it in the 'wills' of natural persons; whereas the fault is a matter of maladjustment of institutionalized instruments to purpose, and such instruments, as objective, have no peculiar relations to specified types of persons but are objective in that they contribute to the determination of the law of persons. The word fault

¹ The fact that a contract is enforceable only when legalized in some way, i.e., by following certain legally determined forms, would seem to indicate this. The interference of the law is simply the assertion of the public will, not merely to guarantee the interests of the principals, but also to safeguard its own interests as the public will.

in a case involving corporate relations has more nearly the meaning as used in geological discussion since it indicates a break in the social "stratification" rather than a reference to individual wills. Whether regulation of utility corporations is the proper method of guaranteeing the interest of the public is of no consequence here; what is of importance is that the necessity for interference in behalf of the public has forced into the legal mind the recognition that the contractual relation is not as simple as it is represented in traditional theory. Another instance of the extension or multiplication of the 'parties at interest' in contracts is the expansion that is taking place in the police power, by which the corporate whole assumes the right to intervene in practically all of the relations of men in the interest of the whole.

That is, it may be regarded as established that there is no relation in life so simple that it involves merely two integral and self-contained terms between which it subsists. Even marriage, which would seem to be essentially a 'personal' and private arrangement if there are any such, has always been subject to more or less control by the whole, and the interest of the whole in the institution of marriage formerly led to the denial that the marriage bond was a matter of contract at all, but a matter of sacrament, involving the consent of some supernatural party at interest. Thus the most intimate of private relations have far-reaching public consequences. But this means that the interpretation of private relations in terms of their public consequences makes necessary the recognition of the larger person as the 'subject' of the Right, and it is their subject as personality which as principle gives to all private rights such significance as they possess. It is then this comprehensive person and the principle of its right that gives to the relations of men their intelligibility, and that renders it possible that there be instituted a degree of order in the affairs of men. It is the whole then that is the ultimate party at interest in all human relations, in the sense that no rationality can be given to any human relations except through their reference to the whole. And the complicated relations of the contractual type with which we have to deal in the case of the relations among corporations have revealed to us the characteristic nature of the ultimate 'third party' in the conception of the corporate personality as the highest type of individu-

ality. And it is through this conception of the corporate nature of the individuality that questions of the relations of the 'individual' to the 'social' become first intelligible in any adequate way, in the suggestion that the real characters of the individual are the universals through which he is bound to the whole body, and that questions of the nature of order in human affairs as aspired to by the law get their first suggestions of principle. And, while the conception is as old as Plato, it still awaits embodiment in detail in the system of practical principles upon which an adequate administration of justice can effect or create a satisfactory social organization. In every contract there is then the whole as the party whose interest must be satisfied first and in full as the condition of the fulfillment of the interests of the parties more directly at interest.

IV. CONTRACT AS IMPLYING THE SOCIAL WHOLE

The ultimate 'legal consequences' of any contract considered as the composition of interests with respect to the end are consequences primarily such as accrue to the whole. And the matters which involve the property and freedom of individuals are such just because it is through the concepts of property and freedom as rights of the whole that they acquire any significance for the individual at all. That is, the whole as guarantor of private rights must be regarded as ultimate holder of them. It is only as property becomes the objective condition of freedom and the corporate form, in which freedom as interest is universalized as purpose, realizes itself as end that any principle can be found as justifying private or any other form of property. It is accordingly necessary that in attempting to determine relations of property and freedom as between natural persons, the ultimate ownership of property and the ultimate spontaneity of freedom should reside in the ultimate person as guarantor and safeguard, otherwise there would be no principle by which to adjudge the right of the determination. The insufficiency of the analytic method which merely counts cases and refers to rigid rule in precedent cannot be too strongly insisted upon. The nature of the contractual bond can never be derived from the study merely of cases in which the bond occurs. It must be discovered as the

law of the *case*, and for this purpose any one contractual situation will suffice. The assumption contains a contradiction. It is assumed that a case can be isolated and known directly and as such, i. e., in principle, and this act of isolated knowing can be repeated indefinitely, or until the principle of the whole appears from the aggregate; whereas each act of knowing implies the principle of the whole as already operative, whether as consciously or not, as the condition of the knowing. It is only from the end as principle that the case appears or has meaning, consequently the rights of specific persons presuppose a principle of right in the order of objective life.

The contractual relation is, however, essentially and peculiarly the ground of property and freedom. It is peculiarly the principle which governs the status of property when property is looked upon as a source of law; and it becomes the principle of freedom in its political aspect, where it has traditionally been stated as the social contract or compact theory. The great difficulty on this point which exists in our accepted legal conceptions comes from the negativist character attributed to freedom and to all the other relations out of which legal consequences grow, a character which has its origin finally in the anthropomorphic assumptions connected with the concept of authority. Freedom has meant in the main the absence of restricting conditions, or when an attempt was made to put it in positive form, freedom was confused with the power to prevent restricting conditions from narrowing the sphere of action of individuals. But this is merely to attempt to overcome one negation by another, and its fallacy lies in the failure to see that a double negative does not assert a positive, but merely implies its possibility. It is this latter aspect which is characteristic of the revolutionary movement for 'liberty' of the 18th and 19th centuries, and the reason that that movement was generally so crudely destructive. Thus freedom is identified with the motive of defence which is, although from its psychological derivation it has the appearance of a positive meaning, peculiarly a negative and destructive motive. It is this negative vindictive and separatist element in the modern conceptions of freedom which has forced all our systems of thought into contradiction and thrown all our systems of institutions into confusion. It is this negative element that has come to be the special core of meaning for the term

private as it has to do with property and rights. Thus the right of possession is *exclusive*,¹ the right guaranteed by the public power to prevent others from using, enjoying, etc., the object to which the right attaches. But we have shown in a number of connections that on a basis of this negative motive no possibility of a rational organization exists, hence if the law is to be the principle which effects or is constitutive of order in human affairs, then the old doctrine of private right as guaranteed in contractual relations and as the principle and ground of freedom is a contradiction in terms. This point must be insisted upon. The doctrine of private right as exclusive with respect to things is fundamental to our legal systems. And private right refers to the exclusive right of individuals assumed to be more or less complete in themselves. But if the nature of the subject of right is what it is supposed to be, then it excludes subjects of right from any kinds of order which are principled by the nature of subjects of right, which means that there is among subjects or right no natural or internal or immanent bond of harmony, and their organization must be effected by external force. But this, we saw, leads to all the contradictions involved in the concept of authority. But a degree of order which affords to the individual a significant opportunity represents the essential minimal condition which law as such must fulfill. Then on the supposition as to the nature of the beings which law is to bind into unity, no conception of law is possible at all, since the exclusive character of the individual is the antithesis of law. Or, if a conception of law is arrived at by an analytic *tour de force*, it is of the abstract and external nature which can make no contact with concrete persons at all, not even the exclusive persons of the theory; and the consequences are that no significance can be found for obligation, and law must rely on force for its sanction, which is contradictory of the nature of law considered as principle of order. And it is this latter abstract law which is the basis of the prevailing

¹ Salmond, *Jurisprudence*, p. 245. Pollock and Wright, *Possession in the Common Law*, Oxford, 1888, make a distinction between possession, which is exclusive (p. 119), and the right to possession, which is not exclusive (p. 146). The right to possess "may exist in different persons at the same time against a third, in virtue of different proprietary rights, though as between themselves one must be subordinate to the other." Such language does not, however, avoid the implications of exclusiveness, if we are to take 'against' and 'subordinate' in their ordinary sense.

individualism. The law of contract then, in its prevalent form, negates both conceptions of the concrete individuality and the principle of freedom which as law guarantees the reality of individuality.

It is apparent already that the juristic institution of contract is not a positive and constitutive instrument to the freedom of men. It is of course intended to be the institution through which the normal impulses and powers of men should be directed through some sort of function of the whole to the ends that are proper to human life. It has, however, on the contrary become the instrument by means of which given individuals or given groups take advantage of other individuals or groups. Hence the eternal round of "breaches" of contract and the appeal to the law to maintain a contract which will not stand on its own right. It has become the principle through which privilege maintains unjust and unsocial relations to its own advantage, and while these advantages are often granted in the first case with a view to the public good, they become inevitably the source of oppression to one functional division of the whole of life and the means to the aggrandizement and power of another functional unit in society. Advantage or privilege is thus the indirectly and ostensibly legalized use of force in the private relations of men, and it takes the place of 'privilege' in its historic form as the legally granted investiture with the right to use force in private relations. But in any case or any form it is the necessary consequence of the abstract system of law which, as separated from the person, can find no sanction in real obligation. Thus it has already been shown that the distributive function has become the parasite of the productive and the consumptive functions of modern society through the privileged advantages accorded to 'business' by legislation supposed to be directed to the public good. The same condition of fact can be cited as the consequence of our patent laws, which, like most of our legislation, proceed on the assumption that the stimulation of individual "initiative" is the prime prerequisite to the public good. But the line between the legitimately rewarding individual capacity for public benefits and the creation of a dangerous privilege with unsocial tendencies cannot be drawn with precision. So that our very impulse to the public good often creates the instruments which preclude

its attainment. This is the present status of the institution of contract. As a consequence, the arrangements in social life which have reference in a large way to the public good, in that they take the contractual form originally adapted to the individual taken by himself, quite generally prove inadequate and unsatisfactory, and the consequence is the universal distrust of law and governmental machinery as agencies through which the good is to be reached.

This point carries an apparent criticism of our doctrine of corporate personality which may as well be met here. It is the tendency of present civilization to attain its ends through larger and larger forms of private corporations which are institutions constructed upon the principle of contract; and the tendency seems to involve the gradual lessening of the degree to which social purposes get fulfillment in proportion as the technical effectiveness of corporations is perfected. It has further been suggested that the private industrial corporation might be taken as the type of corporate personality. But it has nowhere been said or suggested that the principle which is assumed to operate in the private corporation is the principle of personality which we seek. We may say that just as the industrial corporation is the bodied principle through which our larger purposes are attained, in so far as they are attained, so may the objective and corporate person be instituted as the instrument of the principle of Right. Corporations are primarily aggregates of property concentrated about the negative contractual idea of power; force and wrong are therefore characteristic of them; but the same property-bodies organized by will (which as real is common) will make of them positive agencies of good. And we have suggested that property as the objective essence of life and as individuated by the principle of the whole will constitute the instrument of objective Right as a satisfactory public order, just as the industrial corporation principled by private profit is the instrument of confusion. It only remains to principle the property corporation with the law of objective personality which as real will appear as positive co-operative effort, in order to convert the tools of confusion and strife and greed into the instruments of order and peace and liberality; but we need have no illusions about the facility with which this transformation is to take place. In this particular connection

we are urging as a step toward that end the reconstruction of the legal theory of contract, but a similar reconstruction will be necessary for perhaps all of our larger idea-systems. And the hope that such a reconstruction can be accomplished is based on the fact that, in a number of other "fundamental" ideas, such a reconstruction ¹ has occurred.

Thus we may conclude the discussion of this fourth topic with the proposition that contract, in spite of our good intentions in creating it the central conception in a system of law which had for its end the general good as mediated by the efforts of individuals, has become a hindrance to the good and a limitation to the very individual initiative it was supposed to cultivate. The principle of contract has become the tool by which unsocial forces slacken the pace of civilization and arrest progress until private greed is satisfied. The individual capacity which contract has protected and nurtured is the capacity to acquire without reference to ends. It is therefore negative and destructive in tendency.

V. CONTRACT AND MORAL OBLIGATION

When we approach the fifth point, we must be prepared to face difficulties of a much more serious nature. We are here once more face to face with the ultimate reality—obligation. Our criticism of contract under this head will undertake to show that the conception of contract as recognized by the traditional law and political theory has no kinship with the moral principle of obligation, and that this principle must be the foundation of the law which is to command the respect of men.

We have seen that the prevailing legal conceptions ultimately presuppose force as the guarantor of their objective realization, and that the conception of force which they imply is that of a power derived from some agency other than that to which the force applies. This is the doctrine of sovereignty conceived as an irresponsible power and as abstract and external to the beings subject to power, underived from those beings and superimposed upon them. It has been shown that,

¹ For a thoroughgoing criticism of the modern industrial corporation Cf. Joseph Charmont in Ch. IV, Sec. III, pp. 167-174 of *Progress of Continental Law in the Nineteenth Century*, Boston, 1918.

in spite of the implied externality of the power, the theory which postulates the superimposed power itself claims to be derived from the nature of the beings upon whom the power falls as ultimate arbiter, and that this set of presuppositions involved contradiction. The difficulty, we saw, lies in the falsely conceived nature of the individual as negative and exclusive. And we also saw that, assuming negativity and separateness as the essence of individuality, the inevitable result is the breaking up of individuality into kinds of individuals, which are by nature opposed to each other, and between which no composition can be effected except the unstable condition of a balance of natural forces. And this condition, as implying nothing distinctively human, and showing no appreciation of differences in scales of values, is the ground not of order but of confusion, proof of which requires only the citation of the facts of war and industry as they have developed during the past two centuries. As the ground of confusion these conditions negate the very conception of law as principle immanent to the life of which it is the law. We have not yet learned the meaning of *natural* law.

But the criticisms we have directed against the abstract individualist theory of law and social order have already become the common property of many persons, and these criticisms, with others still more weighty, are already constituting the ground for a growing system of legal conceptions and for the hope that these conceptions may be woven into the principle which constitutes the law of life. These criticisms all state in so far as they appeal to subjective considerations, that the 'source' of law must be discovered in those characteristics of men which lead them to the institution of objective instruments designed with respect to a common end. This end is the issue of the individual's capacity when directed in accordance with right, and, as such, defines his rights. The end establishes claim upon the individual because its universality conditions the appropriate issue of his capacities, so that a breach of that claim means frustration to his capacities and miscarriage of his aims. The individual is therefore by the essence of his nature bound to his end in his objective social world, and, since the bond is the universality of the end, it is the characteristic common to all individuals, and as such the condition of order among the individuals and hence the

ground of law. It is this fact that is the ground of the possibility of a science of law. But a mere science of law does not dig deep enough to lay the foundation for law whose reality lies in the respect it can demand. This bond of unity with the end is the individual's obligation and, as the common moral characteristic of men and the universality of the end at the same time, its dynamic effectiveness or 'will' moves in the direction of unity rather than of dispersion. The original, i. e., differentiating, purpose of men is the motive to agree to order, just as the original, i. e., characteristic, tendency of fact is in the direction of organization. Thus is the essence of man found to be in the positive tendency to order, rather than in the negative dispersive tendency to strife, as represented in current legal and political theory. Hence, as a positive characteristic and a purpose to order, obligation gives us the key to a definition of the end in concrete universal terms as the whole of men in society. But as a moral ground, this statement is still subjective until we go on to say that the wholeness of social life is mediated through institutions.

The essence of contract is then agreement, and agreement is a positive tendency to organization by principle into higher forms of individuality.¹ It is then the principle of freedom or spontaneity, the law of the reproduction of individuality through growth into higher forms. This positive principle of contract begins to get recognition in the more liberal and forward-looking interpretations of law. Thus, Salmond recognizes the peculiar essence of contract to be the general tendency to agreement, and agreement as the universal fact of life and the positive principle of synthesis in human relations. It, i. e., agreement, is the centripetal tendency to order which is the essence of life. "Of that great multitude of rights and duties of which the adult member of a civilized community stands possessed, the greater majority have their origin in agreements made by him with other men. By agreements of contrary intent he may strip himself almost as destitute of rights and duties, as when in the scantiest of judicial vesture

¹ It is of course not necessary to emphasize the fact that by the term agreement we do not mean the mere temporary common feeling which agreement popularly means. It is here that the causes of the failure of attempts at industrial "harmony" all lie. Such harmony is merely a screen of feeling behind which lurks the grim fact of uncomposable discord, since the feeling is itself the smothered fear instilled by force.

he made his first appearance before the law."¹ This is a clear recognition that the whole system of rights and duties springs from the synthetic tendency in human nature. And as order is the formulation of rights and duties into dependable systems, and as rights and duties are objectified instances of obligation, order as the social body is the realization of obligation, and obligation is the constitutional law of human order. This law in its dynamic concreteness is the fact of contractual synthesis, and becomes thus the characteristic of persons. As Salmond puts it, "A contract is an agreement which creates obligation or right *in personam* between the parties to it" (p. 308). An agreement which creates a right of any other kind, e. g., "leases, easements, charges, patents, franchises, powers, licenses, and so forth," he calls a grant. It is thus clear that he has in mind the aspect of personal obligation as the distinctive feature of contract, and this we have seen gives to contract a positive and constructive reference to human relations. As creating a right contract does not establish a right against another guaranteed by the power to compel, but establishes a constitutional relation between persons which leads to the fusion or synthesis of their capacities and powers and a convergence of their powers upon a common end. It is worth while to emphasize the fact that contract creates rights *in personam*, if we may revert to our discussion of right in an earlier connection and to the fact, as we believe, that rights are founded in an objective and outward status of 'vestitive fact;'² we can then say that the power to contract is the creative capacity which operates objectively as law in the formation of institutions and in directing them toward ordered relations with each other as the means to social order. It is thus possible to give universality to the principle of contract only when it is interpreted positively and creatively, only when it is identified with the essence of will and obligation as the practical genius of mankind.

There is therefore no possibility of 'enforcing' contracts in the negativist and impersonal sense of the law. This appeal to the law of force we saw in the preceding chapter to have resulted in the divorce of property from the personality. It is here necessary to remark that since property has been de-

¹ Salmond, *Jurisprudence*, 4th edition, London, 1913, p. 305.

personalized and the characteristics of persons have been volatilized into political relations which are supposed to have to do with their abstract freedom, the necessity that the contractual motive find concrete form has converted it into a right *in rem*, and the function of contract has come to be supposed to operate as a distributive principle of property. And since the prevailing idea of property emphasizes its exclusiveness, contract as guaranteeing the right of property has come to be a centrifugal force in society, and has therefore no organizing capacity. Hence the contractual 'obligation' is commonly thought of as one that cannot be evaded; and obversely, in popular thought, a fact which is of the profoundest moral consequences, a contract that can be evaded carries no obligation. It is thus that in the sphere where contract is most prominent and the sanctity of contracts most loudly acclaimed, the principle of "get what you can legitimately" has come to be adopted, where contract means a hard cutthroat bargaining and where legitimacy means to refer to the legal conditions which the same get-there-Eli principle can secure through the corruption of legislation. Thus there is evident in the tendency to regard contract as other than a personal relation the vicious endlessness of process unprincipled by fundamental law.

VI. CONTRACT AS OBJECTIVE PRINCIPLE—POLITICAL COMPACT

Contract is then the law of obligation not only among persons considered distributively but also in the person. Obligation is then the bond of unity between the person and his end. But the end is the whole of persons. The contractual obligation is then the principle of order in organized life, and must be looked upon as dynamic and constitutive. And, as determinative of property as the objective realization of the personality, the law of obligation of contract becomes the constitutional law of reality. It is thus clear that contract has no negative function, and that the enforcement of contracts by the power to compel discloses the degeneracy of the principle after it has been made the distributive principle for property regarded as exclusive and as divorced from the personality.

It is thus clear that the idea of contract can be given no consistent meaning as the particularized bond between individuals in the traditional sense. Contract must reach beyond the narrowly distributive relations that bind human units in one-to-one connections. It is essentially an objective and social principle, while the prevailing legal theory of contract is, as we have seen, subjective. The idea must be taken up now as the 'compact' theory, the form in which it can alone maintain its objective and social reference.

A contract, as the assent of wills, is the fusion of two or more fact orders through growth into an order of fact which is their common end. The fusion is accomplished mainly by coming to a recognition, on the part of both, of the common content of both wills. And this realization of the common end in fact is the life of action as contemplated by the law; while the realization that a common end in fact is the common fulfillment of each is the "meeting of wills." An agreement, in the sense of a distributive settlement with reference to diverse ends, where each comes into exclusive possession of his own, is a contradiction in terms. As we have seen, the content of all minds is the common objectivity of nature, and this common stuff is the same for all minds, allowances being made for differences in what may be called the angle of incidence of subjectivity in different minds. And for minds under the same or similar temporal and local conditions, this identity of stuff of will will extend to details. A thoroughgoing communism will 'work' in a small detached group. The recognition of the community of content by two wills then is the recognition of this common content as a stage in the growth of a common objective end as the fulfillment of each. It is to be emphasized that the content of wills is common in any case not because of the subjective identity of souls but because all act through the same external objects; which external objects as thus the ground of action become the means-end condition of self-realization for all. Since the sphere of will is thus limited to the order of fact, the problem of practical relations of persons is one of leading them to see that the community of stuff is also or should be through their wills a common unity of ends. As a common content the stuff of wills is the diversity of fact of nature as that is formed into distinct instruments by the common activities of men or by the common

appreciation of men. These activities and appreciations as common do not yet imply contract or agreement or even will, since, up to a certain point¹ they come as the uniform result of the like internal organization of persons. But when a plurality of natural objects is recognized as a fact-order organized with reference to a subsequent stage of its own form, there the object has become the content of a will; and, it must be repeated, it may be the content of an indefinite number of wills at the same time. That is, the object is itself the 'seat' or point of inherence or residence of will, and its various characters are the lines along which the possibilities of action as the distinction of wills runs. But the detail of the order of fact which makes up a will is indifferent, it may be anything, possible or actual. It is this indifference that operates as the ground of the creativeness of will. The detail of two wills may therefore be identical in all points with the exception of the recognition of the precise nature of the relation to end, may be factually identical in all points with the exception of some character or characters in the end, these different aspects of the end being merely different points of view due to the angle of incidence of subjectivity. The unrecognized presence of this difference in the relation of fact orders to their ends is discord, or the failure of wills to "meet." An agreement between two persons is, subjectively, a matter of their coming to a common recognition of fact, fact which is content of both wills and involves no elements which are not involved in both wills concerned. This condition may be extended theoretically so as to involve the whole human race, and will do so practically if there are any 'human' interests as such. It, as subjective, is therefore primarily an intellectual process, and rests upon knowledge as the common ground of action and the common stuff of life. For example, I may disagree with my neighbor about a fact that is most trivial when regarded as a means to action or as an element in the structure of scientific knowledge. I may object to the noise which his children make in their play. The fact as a temporal occurrence is trivial, as it would also be in a system of knowledge; that is, the fact that children

¹ That is, on the stage of habit and instinct common activities reach common results more or less unconsciously. These results become ends when recognized as common. The recognition may be subsequent to the attainment, or may precede it as a common intention.

make noise is, in general, not important. But yet just such a trivial fact in personal relations may be the cause of tragedy, and it is interesting to try to see just how it could take on meaning. If, for instance, the child is convalescent and the play and the noise are essential to the recovery of its full powers, then the image of the child's destiny centers around the play and noise which become the present content of fact for what will be, when complete, the full and rich accomplishment of a rounded life. But this is the center of my neighbor's life interests, and my objection to the noise is objection to his realization of his end, and a denial of the element of content which to his end is now central and most important.¹ The problem then is to lead me to see that the fact of the noise is an element in the end that is not merely only private and special to my neighbor, but that is, when I come to see it, necessary to my end as well. This is an intellectual problem in the sense that it involves the interpretation of the fact in its full connection with other immediate fact and in the complication of other fact in the end, and it must go on as intellectual problem until myself as a life is incorporated in the end which includes the noise, until the noise and I are recognized as common elements in a fact order which is universal. Subjectivity is thus overcome through ground relations in objects. My neighbor and I then agree, and agreement as the meaning of contract, is the state of fact together with the process through which its order is attained, to which the term properly applies. The impossibility of guaranteeing the continuity of the agreement or our subsequent faithfulness to it as a composition of subjective interests is obvious. Contracts are maintained through objects made constitutional to the social fabric as property. The agreement lives so long as my neighbor and

¹ It is thus as an element of feeling that such facts become important, and this indicates the danger point in social organization as well as in social theory. It is doubtful whether the classical theory, which would rationalize the feelings by "bringing them under control," and which really means that ideas are substituted for them, can ever be made effective, since it is really subjective as implying that control means the doing something to mental states. But mental states as such are not objects, and hence not the point of incidence for action. It is at this point necessary to appeal to the principle of indirection; and since states of mind and particularly feelings cannot be made objects, to approach the modification and control of feeling through control of those objects which, as appropriate ground of the feelings in question, can be made ends of action. If this Fabianism cannot presuppose appropriateness or aproposness between objects and feelings, then the feelings must be regarded as quite irrational.

I think our facts through to their realization in an end recognized as common; and to compel agreement subjectively would mean that we are compelled to think and restricted to designated ends in our thinking. But this is a denial of freedom as the end of contract. As power to compel, contract is thus the antithesis of freedom. The free will is the will that grows into its end, and its expression is entirely outside such relations as can be stated in terms of compulsion. Force is an instrument of will, not *vice versa*; will never bows to force; but even in this sense force is only a negative instrument and as negative is negligible. It accomplishes no ends, and the best it can do is to eliminate among means to ends. Force is then a mode of action which has no direct or essential relation to the real as will.

But the relation of will to force as thus stated does not imply the incapacity of will to act negatively.

The will that is 'bound' in contract is the will that, as intelligence, has before it its content of fact and identifies the content of fact with its prevised end. Any break in the situation, or in the process through which fact content becomes end, means self-contradiction, the denial of what is immediately known as the center of the identity of the self. The will *can* thus deny, and can act in accordance with the denial; the individuality can change its mind; but it is not properly a willed action if it is considered as a surrender of will to mechanism, or an attempt at avoidance of all content. Or, positively, denial will mean the substitution of a new object as fact content for the one under contemplation. It does not mean the mere annihilation of the object present, nor the mere refusal "to will" as the cessation of a subjective process. We do not will not to will just as we cannot intellectually posit negativity or negation. I can will to use mechanism, but I cannot will to vacate or abdicate in its favor. Vacating would be the acceptance of the most prominent feeling as the qualitative nature of present fact, and the severance of the feeling from its relations to other elements of fact becomes an act which represents the full meaning of negation in so far as it has any positive meaning. The self that is denied or negated is not the mere immediate subjective fact-order of the individual involved, but the self as such; that is, it is a denial that the being a self is important as an act or that the attain-

ment of ends through growth is the life of the real. It is denial of and detachment from the continuous series of fact-orders which make up the whole of reality. Self-denial is then the attitude which evades the evaluation of ends. What binds a will then, stated objectively, is the retrojective influence of the end. The end has influence because it *is* what the present as means will be. It is the binding necessity that in order to be *really* what it is it must become what it 'has it in it to be,' as Green said. It cannot be what it is until it has become all that it can be, until it reaches what Aristotle called its state of nature, until the end, working backward, lifts the present into harmony with itself. The obligation upon me in the instance cited above is to see the fact of the child's noise in the completed experience which is implied in my present, as an element incorporated in the completion of what is now my present as fact. But this does not imply the "imperfection" of the present, rather the present as the ended form of an order which preceded it and as ending in a form which includes and concludes the preceding with its intended complement. Obligation, then, is the recognition of a situation, characterized essentially as a fact-order in time, becoming history. It is the seeing of your end as having become the nexus of all your temporally discordant experience series. The obligation upon my neighbor is to recognize the noise in the end of the harmony of his life with that of his child. And this recognition in both cases is itself a matter of describable fact, of fact that as describable is common content for both him and me and for all who can understand. But as common for my neighbor and me it is objective fact, fact which is at the same time content for all wills. And the relation of a specified fact-content, that is, a fact-content which constitutes a species, to "all wills," or to will as species, to Idea, is the relation universalized as objective obligation. Contract then means the effective bond in order; and as order is the universal, contract is the law of the whole.

VII. CONTRACT AS THE LAW OF COMMUNITY ASSOCIATION

Contract then, if it carry obligation, means growth into community of fact. And as the essence of contract, obligation has nothing to do with enforcement nor with the power to

compel. It is not an accidental and specific particularized case of the meeting of particular wills. It is the law of the order of the common life, the life based upon identity of objective content which is outside the private consciousness of individuals. Consciousness itself is consciousness of the recognition of the common object of minds. My neighbor and I then, grow into the same end, contract a common obligation to an order of fact which includes the lives of us both. And the contract is 'kept' by maintaining the continuity of our experience in the common fact of the commonwealth. This continuity is independent of or rather indifferent to the specific detail of fact; anything may be the ground of community of interest. But since contract has to do primarily with material means, with the forms of objects commonly referred to as property, as the specific adaptations of means to ends regarded as private, the idea of contract has become specialized to the exclusiveness of objects thus regarded. The idea of contract in the legal sense as the principle of organization of a large modern corporation or of any real association of persons is absurd. So is the notion of a wage-contract; the meeting of the particular wills is in either case an utter impossibility and thus meaningless. As the principle of the incorporation of ends contract has consequently come to mean the method whereby objects exclusive of and outside each other by nature come to be constructed into a whole of parts which maintain their original and exclusive identity. Such a whole is therefore a collection held together by forces external and foreign to the nature of the parts, and shows the tendency at all times to fall apart into its original constituents. This explains the dispersive and divisive tendency of the economic system and the eternal round of patchwork measures of legislation designed to force the system to hold together. And it is this same fact which makes the recurrent attempts at 'restoring competition,' the tragedy of modern thought, the conclusive evidence of the abdication of human intelligence in economic affairs.

The obligatoriness of contracts is then common. It is not reciprocal in the sense that each of the two sides or parties to a contract must supplement the act of the other by a specific act of his own. This process of 'faithful performance' shows that a real contract has never been completed and that a con-

tinuous series of attempts must be made to restore an equilibrium that does not now and never did exist. It is therefore useless to attempt to make a contract obligatory by a summary of 'stipulations' divided equally between the parties to it. Each of these is in itself an evidence of weakness in the whole, and a suggestion that if a specific tie can be evaded safely an advantage will be gained in the corresponding point to which the other party is committed. This makes then the necessity of the law of contracts, which holds over the evader of a term the prospect of a loss on his own part and seeks to deter him by force applied in advance as threat. And this threat gets the name of law! It therefore in appealing to the threat of evil consequences assumes that law can guarantee contracts only by an appeal to fear, and the function of fear in an intelligent being is to stimulate him to the discovering of means of destroying what causes fear. Law is thus recognized as an enemy, because it recognizes itself as enemy, and respect for law becomes impossible. The law becomes 'the power to compel,' and its connection with the 'law of nature' is severed finally and it becomes merely the power of the stronger party. The state as final guarantor is then merely the strongest party, the state of force and authority. The law becomes in this way the ally of strength and privilege, and thus intensifies the division among subjects it was invoked in the first place to overcome. And this aspect of 'positive law' cannot be too strongly insisted upon. Its application in litigation results quite as often as otherwise in merely laying the grounds for further litigation, a process which implies absolute power and authority at some point, but the point at which power and authority reside is infinity, and the bickering process goes on forever. The law of contract is thus the infinite process. This means that it is false in principle. And this is the reason why at present the courts are coming in for criticism from all sides, a result which is itself due to a failure by the courts to see that the fault is in the fundamental concept of the law itself. What is wrong or false cannot be made to work true or rightly, even by a supreme court. Obligation is then not reciprocal but mutual. The reciprocity of obligation in contract merely bases the contract not upon intelligent agreement or accepted obligation, but upon the principle of what each party can compel the other to do or forbear. It seems thus to intend

a minimum of agreement. It is thus a breeder of strife. Its idea is derived of course from the assumption of separate wills in isolated individuals, and once the separation is assumed there is no power to force them together in permanent or stable form, nor no intelligence that can find an end to the eternal round of attempts to put them together. They must be externally stuck together in the infinite process eternally by a principle that is itself responsible for the process. Contract in the real sense is a growth in mutuality of recognition of common ends. Its process is natural and can only be asserted or declared by the law. The law cannot enforce it. It can only interpret it. It is not the sort of thing that is to be enforced, but the sort of thing that can prevail only by being understood. It comes from the spontaneity of will.

A contract as such, a real meeting of wills, is not enforceable by law or by anything else. It is as an expression of will simply outside of the sphere of force. As an expression of will it will get "enforcement" in objective form, and there is no power in heaven or earth to prevent it. The only circumstance under which the act of will may fail to get objectification is the case where the will through growth changes its own end. But this means, not that the will fails of embodiment, or that it fails of embodiment through the influence of an outside power, but that the end has developed into a new form in the course of its own execution. No power or authority can compel the execution of a purpose nor the abandonment of it. External force can, like the 'government' of the individualists, hinder and harass by destroying the objects in which will successively embodies itself, but will is final over time and force, and will attain expression. It will attain *proper* expression, or 'good,' if it can utilize intelligence in the adaptation of means to ends; inappropriate or improper expression, or 'evil,' if its vision is clouded by passion or the privacy of interest, which is the subjective or conscious form of force, or if diverted from its natural object by force. Enforcing a contract is an absurdity. Will cannot of course meet force on its own ground or by its own methods, but it can ignore force, it has its own evasive Fabianism of ends which uses all things as means. It cannot therefore be defended or defeated, but it is often postponed; and in the presence of temporarily unattainable ends may embody itself in an ideal object, an

object which exists only in plan, as in an object of art. This plan then becomes the 'substance of things hoped for,' which with reference to human relations, is the Utopianism that is at the basis of all political activity. And the employment of force as help to hasten the expression of will merely results in the ludicrous and grotesque, as the blade of grass which attempts to grow under a board, or the mind which grows up under repression and 'self-denial'—the most unbeautiful of things. But unattainableness means only indefiniteness of postponement, and at the first opportunity presented by circumstances a tangible object will be seized upon and instituted as end in spite of force. This means that the ultimate "force" is will; but not that every expression of will is necessarily a good or proper object. It will be so only as expression is freely chosen. The finality of physical force in natural science is as yet an hypothesis, and there is no obligation to accept it as final. All *known* force, all force that gets reduced to objective immediacy, is simply the methods through which will is applied to, or fulfills itself in, its object.

This argument seems to presuppose fatality and necessity as the characteristics of will. But necessity is implied only *on the assumption of discrete individual wills*. Once grant the continuity or sociality of wills, or *the objectivity of will*, and all the arguments are seen to be expressions of the freedom of the whole. Individualized wills are *not free*, and that is the end of the matter. But wills individuated within individuality are the ground of freedom.

It is now necessary to appeal to some more promising and constructive tendencies in social thought and in practical life as instances of the principle of contract in the sense in which we have described it. We have seen that contract considered as the process whereby isolated individuals come together or 'meet' to form the basis of social continuity is contradictory at every point, and that the law and social theory based upon these assumptions are impotent of any fruitful suggestions with reference to social or political organization. It is therefore necessary to find the genius of contract in something other than the mere meeting of subjective wills. Our analyses have already suggested, and, as we think, established and justified the reference of contract to the social whole, where it is to be identified with the pervasive objective principles of

order in the whole. Our problem is now one of describing and instancing contract as this law of integrity and wholeness of social life in some of the characteristic forms which social organization is at present taking on.

It has been assumed throughout that all attempts at understanding the phenomena of social life and at evaluating social relations should be grounded in fact. But it has also been recognized that fact is not the fixed and abstract and empty datum as commonly conceived, but has inherently and by nature characters by virtue of which facts considered as separate existences may be brought into relations with each other. The primary characteristic of fact has been designated on the one side as the dynamic element which makes fact interpretable, in the lower orders, in terms of motion, or which makes facts in human relations distinguishable from motion as actions; and on the other side as the permanent quality of fact which refers it to that form in which its inherent dynamic tendency is ended—thus establishing the distinction between means and end as the ground of the concept of purpose. This distinction within the nature of fact then gives ground for the transition from mere motion or motive as a physical or psychological phenomenon to purpose considered as ideal, and in this way the ground of will as the faculty of ideals is laid in the characters and relations of ordinary fact. Will has thus meant throughout our discussion, in the first instance, a certain *status* or *layout* of fact as the objective counterpart and expression of the dynamic tendency to order in the fact itself. This is as much meaning as can be given to the human will, a certain order imposed upon or disposed within a characteristic type of fact, facts which, as disposable in other ways, become the mere data of science and the instances of abstract logical generality. It is this *disposition* (using the term as a combination of its physical and psychological connotations) of the facts that is unique and special to a given instance of will, hence the facts as objective and independent are, even as unique, the common basis of all 'wills.' It is this fact that lies at the basis of the idea of the general will; a total of fact disposed to end itself in a given way. The general will is real as the *principle of order of wills*. But when considered as the collectivity of the infinite number of possible disposals of unique fact the result is the collectivist conception of the

"will of all." But as thus pluralized the will is the victim of caprice and is subjective, since it is described without reference to its objective content and the principle of its internal organization which is the law of its disposal with respect to other wills. It must therefore objectify into this content through its dynamic tendency to growth, and this tendency is the 'executive' capacity which universalizes will as law in the *order* of facts. There seems no other way to get over from will to law except through their common basis in fact.

VIII. CORPORATE ORGANIZATION AS THE INSTRUMENT OF CONTRACTUAL ORDER

The order of fact thus becomes the principle of the constitution of reality. In human affairs the characteristic order of fact is, as we have seen, the corporation, taking the term to refer loosely to all sorts and degrees of association. This form is characteristic in that it represents a natural synthesis of personal wills into a higher personated form, thus indicating corporation as both the principle of distinction among forms of the real, the principle of individualization, and the law of personality, which expresses the positive inner nature of the real. Corporation is then both the natural objective and universal expression of purpose¹ whether personal or pluperpersonal or social; and also the inner active *law* of purpose which overcomes the distinction between individual and social by establishing their continuity in Personality. Personality is thus the permanent aspect of the law which individuates the real in its varying degrees of comprehensive order. In practical relations, such as form the proper sphere of juristic science, the operation of this law whereby temporally discordant facts are disposed into permanent unities, is ascribed to will and the unity achieved by wills is designated as contract. A rather wide variety of terms are used, association, consociation, collectivity, etc., in all of which the idea of agreement is fundamental. It is thus evident that contract

¹ The term purpose is not intended to connote any of the mystical attributes and characters usually implied in 'idealism'. It means simply the situation of ordered fact with its tendency toward its end which we have called all along *will*. As such, of course, it involves the inference to values directly, but an inference to values does not mean necessarily a reference to subjective mental states.

and corporation are in principle identical, only that the one term refers to the law or principle involved while the other refers to the objectified form which the law takes or recognizes as fact-synthesis. The corporation then as a body of fact is the institution through which the unity of wills is effected; it is that unity of wills when the wills as purposes have ended themselves in a common objectivity.

It would seem somewhat far-fetched to identify the actual industrial corporation with the ideal object of philosophical enquiry, and, considering its popular reputation, a gratuitous strain upon the imagination to see in it the full perfection of tendencies which approach higher conceptions of good. The industrial corporation is regarded as, and in fact it is, the embodiment of most forms of social evil. But its uniform evil merely testifies to its central importance. We are here concerned more with its inevitable tendencies and the ends which universal human purpose must get realized through it, than with its temporary weaknesses. The corporation appears as the source and basis of evil because it is the characteristic instrument through which public objective purposes are carried out, and the defect is as much due to the confusedness of social purposes as to maladaptation of corporate means to their realization. And since the corporation is the visible and tangible fact, evil consequences are readily attributed to it which in reality belong to something less opaque. But whatever may appear to be the source of evil the real difficulty lies deeper in the type of ideas which circumscribes the purposes and defines the means to their fulfillment. The source of the weakness of our practical corporate organizations is the law which creates them, if one may lapse into the use of terms which that law presupposes. It is our faulty principle of individuation that is at the bottom of the wickedness of corporations. With our emphasis upon individual responsibility and our peculiar notions of freedom, we allowed the corporation to grow up without care or attention, in whatever way the circumstances might determine. Indeed, the extravagant variety of capacities with which we invested them in their charters seems to indicate that they were intended to be as irresponsible as possible. For the evils that attended the growth of a given corporation we attempted to find a cause in the wicked will of some 'person,' and we found no way of con-

trolling corporate activity except through the holding of individual men responsible. The corporate person thus grew up without moral discipline while we were chastising its most outstanding natural person for the sins of the corporate body. Our instinct or prejudice for personal responsibility was sound enough; only we were not intelligent or well informed enough to know which person was really responsible. While we were engaged in delivering moral instruction and reproof to the natural persons connected with corporations, the real moral person was following the bent of its cruder instincts. As a consequence many of its activities became thoroughly bad and vicious, simply because we would not allow the principle which, as we supposed, created it, to continue to direct it to the accomplishment of real ends. The corporation as a moral being, as a unity of wills objectified in external order, has thus come upon us more or less unawares, and we have not yet come to full consciousness of its moral status in human life. We are, however, not so much interested in the morality or immorality of corporations as in their nature and structure. Analysis of their function and structure will show the moment we cease trying to make a *natural* person of the corporation, cease trying to force the complicated reality of the whole into the limited compass of the part, and cease falsifying its *personal* function by trying to represent that function as *private*; the corporation will or may become the most powerful of moral agencies.

The nature of corporations as embodied unity of wills is indicated clearly by the two favorite topics with respect to corporations which one finds discussed in the legal literature. I refer to the questions as to the origin and dissolution of corporate bodies. Perhaps the prevailing conviction is that the corporation is created by the law. But the whole question is full of equivocation and much of the discussion would be unnecessary with some distinctness of connotation of terms used. If we are to mean by law simply the positive enactments of legislatures, and by corporation that 'fictitious entity' which appears in response to the legislative fiat, then corporations are created by the law. If a naturally organized group of persons and things as instruments which comes into being of its own initiative with a view to the objectification of a large purpose is not a corporation or a person in the contemplation

of law *until* recognized as such by legislative enactment or judicial decision, then corporations are created by law. If we cannot call a naturally organized and easily recognized body with a definite function a corporation until after it has been duly christened by the appropriate priestly authority; if the process or ceremony of naming is the creation; if in other words we are not past the age of socialized symbolism and superstitious mummary where the form is taken for the substance, then corporations are created by the law. But it seems perfectly clear that corporate or personated bodies grow up¹ in nature without any godmothering by our sacred presuppositions. The corporation is the natural embodiment of a social purpose, when a social purpose is regarded as the objective logical medium in which individual purposes are realized. It is the more or less consciously formulated institution, and has come to take the place of the older institutions which were established reflexly and unconsciously under the influence of imitation and custom. It is not created by anything outside itself, it is the product of its own dynamic life, of its own order effective as will; it is a fact-synthesis principled by its own law, and in this sense it has no origin. To speak of its originating out of some specifiable thing or act or even out of a complex of tendencies is absurd. It grows up within the system of reality as a form which represents both the permanence of realized or objectified purpose and the creativeness of purposive process, and the distinction between created and creator is within it, hence, neither of the terms of the distinction can be asserted of it. It neither creates itself or is created by anything; it grows. It is the individuality, the real within which the distinctions between purpose and end, law and subject or legislator, and all other distinctions are real. It is individual.

The corporation is the creature of the law in no sense but the most literal and formal and positivist. What must be said, if we are under obligation to recognize the distinction of creature and creator, which we are not, is that it is the corporate individuality which creates the law. It is the total of such corporate agencies which constitutes the real and actual governments of the world, compared with which the puny

¹ Duguit, *Progress of Continental Law in the Nineteenth Century*, Boston, 1918, p. 97.

pretense of the "constituted authorities" becomes shallow mockery. But if we must think of this relation as causal and sequential, as we perhaps invariably do, even this is not true. The causal relation simply does not apply; it is a practical relation. There can be no understanding of the elementary practical relations until we are off the ground of causal sequence and have found a higher logical ground where the causal along with other relations gets its proper locus. It is of course true, and it would appear to be a forceful demonstration of our argument if we could adopt it, that empirically it would be very simple and easy to show that most or all actual legislation in modern times is effected at the behest of powerful groups whose 'personal' identity would be difficult to locate or establish, but we must come to the point of recognizing that questions of law and of the nature of moral agents are not intelligible upon mere inductive and empirical grounds alone. But if such questions are what are implied in questions of origins and creation, and the question of the nature of a moral agent is involved in that of the origin of corporation, then that meaning requires to be made explicit on the higher ground where the permanent substance and the active principle occupy in all-at-once synthesis in the real. In this sense the relation of corporation and law is that of fact synthesis and its pervading order, and in this case the question of origin is one of understanding the necessity with which the fact system effects a harmony with the dynamic influence which sustains and maintains it. It is the problem of naturalizing the law, of reaching the conception of a system of fact whose identity would be destroyed in the absence of the law which effects its organization. And such a problem rests, of course, upon logical rather than upon temporal considerations. It is this harmony of substance with process which becomes the logical criterion of truth in the conception of order and consistency in theoretical concerns, and the practical criterion of stability with ordered progress which is the end of all practical interests. But when stated thus in logical or practical relations the question of origins is no longer important. It is this necessity of harmonizing what appear on first view to be essentially opposed ideas that gives rise to the most difficult of political questions, that of explaining how the citizen is bound by the law which he himself creates. And this and such

questions can be made intelligible only when formulated in terms of pure practical relations, where questions of origin have no meaning, since they have been pushed back into the region of presupposition as methodological devices. But the question loses much of its difficulty when we reflect that the apparent contradiction which it carries is universal, and as such suggests at once that its solution must be sought in the nature of law as principle. The necessity of obedience to one's own law is the fact of accord between the life as incorporate fact and the law of life as principle of order, of the objective embodiment of life with the 'nature' of the order of the body considered as dynamic. It is then childish to dichotomize the situation and then speak of the individual creating or of being the cause or origin of his own law. Then this immanent or native law is the only law to which a rational being can owe allegiance, since it is the principle which is made evident by an understanding of his own nature. Law is the expression of individuality, not its product. And it is the sense of harmony and accord, the sense of stability and peace and consistency as the condition existing between the embodied permanence and the creative activity as law which is the criterion of one's allegiance and at the same time of the legitimacy of whatever agency claims authority in the public body. Hobbes is then right in saying that there is public authority only so long as there is peace; he might have gone on to say that a government which declares war by that act abdicates, in that it renounces law. It is in this sense that Hobbes is also right in arguing that the form of the governing power is immaterial so long as there be peace, and that the ability to maintain peace is the test of right to rule. What Hobbes means is that the material and causal and temporal aspects of the social body must identify with the aspects of law as order.

It is then the ordered public body which creates the law. It is this body which is the locus of the law's rationality and the ground of its right and its sanction. And it is the corporate aspect of the public body which is more precisely the seat of the law of its nature. Moreover, it is the corporate structure that is the basis of the centripetal tendency of life groups which gives effect to the law through the unifying of particulars in the contractual bond. The social contract then is the law as the functional expression of corporate organization;

and the determination of the legality of contracts is the demonstration of the appropriateness between a "state of fact giving rise to legal consequences" and the principle which sustains it as an order of fact. The contractual bond is the natural order imposed upon a fact synthesis by the principle of the nature of the fact, and the nature of fact as object we saw to be its commonalty or indifference. The contractual relation is the relation therefore into which persons come incidentally and naturally by virtue of their pursuing common ends, and the order of persons and ends thus 'created' is just the embodiment of a universal in a fact synthesis which we call a higher form of personality. It is an entity which grows into order by the regular disposal of the more or less disordered fact, and the positive and constitutive principle by which the organization is effected we call contract. Contract is then the constitutional law of corporation. But it is evident that the contract which is effected by the meeting of isolated wills or by the agglutination of atomic individuals has nothing to do with law, and is therefore lacking in the essential traits which give it reality. 'Individualism' therefore does not make law, but laws, indefinitely. There can be no law *of* contract, and all law is contractual as involving assent or agreement, so long as we recognize exclusive individuals only, but law will be the law *for* contracts and must be in the nature of the case external to the contracting parties and superimposed upon them. But this means that the law has no real sanction and that the necessary attitude of the citizen thus bound is one of evasion and surreptitious disregard where open flouting of the law is dangerous. But this means a social order based upon deception and fraud and fear and suspicion which will sooner or later adopt the principle of fear consciously as competition. But this means dissolution.

Thus the question of the origin of the corporation is a question of the unity and integrity of the corporate organization as a personal and moral agent, and of rationalizing the order of the corporation into the constitutional law of the relations among corporate persons universally as the principle of human order. It is a question of showing the corporation as an instance of the universal.

A similar description will dispose of the question of the dissolution of corporations. It is to be kept in mind that we

are illustrating the principle of contract as an element in social order—that element in social order which is supposed to represent the law of that order. It is the question as to how wills 'meet' as the condition of public order. And we are proceeding on the supposition that little insight is to be gained by associating the law of contract with isolated subjective wills. The essence of contract is to be found in the nature and structure of the contractual object, the situation where contract functions as the law of order. With reference to this objective contractual order the question of origin is the question of growth, the question of how the specific type of organization becomes effective in the facts concerned, and the question of growth we saw to be one of the harmony of permanence and dynamic process operating in a system of fact in such fashion as to reproduce it continuously—to maintain it. The dissolution¹ of corporations then will be a matter of producing a state of repetitive disharmony and strife due to the lack of essential law in the organization, a falling apart because of the inappropriateness existing between the objective body of fact and the imperfect order as law. It will be literally disorganization, or dys-organization. This can be instanced in our attempts to control large industrial corporations. The corporation arises out of the constructive growth purpose immanent in a social situation. It arises out of the necessity that a plupersonal function be performed. It thrives because of the appropriateness of its constitutional instruments to the ends prescribed by the purpose. There is no question of 'good' or 'bad' corporations here so far. The corporation grows strong in proportion as it functions properly, and, in the more adequately representing the purpose which founded it, comes into conflict with the purposes of the larger individuality within which it exists. Its legality then is a matter of which law shall prevail in its organization, whether the law of its nature as at present constituted shall continue to give form to its body or whether the body must submit to reorganiza-

¹ The question of the dissolution of corporations, as also the question of the corporal punishment of the individual, will appear as the illusions which they are the moment it is recognized that law cannot operate negatively. Neither can be necessary from the point of view of the necessity of maintaining and justifying the law, since that implies the contradiction that the law is to be maintained by the destruction of that which as individuality is the ground and creator of the law. The dissolution of corporation and corporal punishment "in the interest of law" is a contradiction.

tion with respect to the law of the larger individuality. The solution, as has been indicated, is in a rational harmony of the two 'laws.' The tenacity with which the law of its order holds as against the law of the larger body attests the strength of the appropriateness of its organization to the purpose which organized it originally. The dissolution of the corporation then is not its destruction or disorganization as negative law implies, but its reorganization under the law of the larger public body to which it must submit. And the fact that the great American trusts prosper in spite of the successive 'dissolutions' and 'reorganizations' imposed upon them by the state shows how 'natural' they are in the life of the public. The faults of the corporation are the faults of the law of the state; a false theory of individuality; narrow and special private purposes will incorporate narrowly so long as the larger purposes represented by what is ostensibly the law of the whole find only partial and artificial embodiment under our negative law. The law as negative recognizes all interests as exclusive; consequently the state as such can have no interests, but must be only the abstract disinterested or uninterested umpire which acts in a *post facto* fashion once the natural processes of social life have taken form. The result is that, as separated from interests and purposes and all other aspects of the person, the state is depersonalized and hence cannot act at all. The way to 'dissolve' unsocial entities is to incorporate them in advance within the larger purposes of the whole, and the law that controls corporations will have to be one which positively defines and lays out lines of legitimate purpose which ordinarily and naturally tend to embody themselves in social life. They are 'dissolved' then in being assimilated within the real whole. The conviction of legislatures with reference to the negative function of law is shown in this connection by the reluctance with which they have in a few cases grudgingly provided for or rather negatively permitted co-operative corporations. But so long as law remains negative it will be war to the knife between incorporated social purpose and "positive" law, and it is inevitable that purpose will prevail.

So the lawyer's instinct which impels him to argue for the creation and dissolution of corporations by the law is fundamentally sound. It is what should be. Only the lawyer, as

usual, permits his mind to work backwards. It is incorporate social purpose as will which creates the law. It is to be remembered that it is not the fact that law is enacted by legislatures or by judicial decisions which gives it the right to function as principle in the social body. Law is not enacted by these agencies, it is declared, confirmed, by them. The right is natural and inherent in the social body, is enacted into universal law reflexly by the performance of function by that body, and its presence there is to be recognized by legislator and judge. Would that our law-"makers" could see this! Their anxiety to "make" laws is a bit of the old superstition that the creative fiat can make reality out of psychological void, as the W. C. T. U. convention redeems the world by resolution. Then public law, the law of the whole, is declaratory of what is natural in the body politic; and the essential function of the legislator is not to prescribe rules of action for the public person but to understand the nature of the public person so profoundly that he is able to formulate its purposes and to suggest appropriate means through which those purposes may be effected. 'Making' law, then, is making law evident in appropriately 'objectified' purpose; and the function of government and legislature is not to exercise negative authority but to possess understanding and to have wisdom and to walk humbly in the presence of the constitution of things. This is the element of truth in *laissez faire*. It is therefore true that a legal corporation, a corporation whose life and action in objective form are consistent with the law of the natural whole within which the corporate body was founded, is created by the law; but by the law which is founded in justice and equity, and not the law which is derived from the intrigue of governments or politicians which must express itself through and exercise authority because it is permitted no natural function.

A corporate body then is dissolved in a case where its contractual arrangements have not become universalized into law. That a corporate body which objectifies, however imperfectly, a real social purpose should be dissolved and destroyed is unthinkable. Legal dissolution is then the redirection of its energies consistently with its own purpose which in turn are made consistent with the purposes of the whole. But the tendency in nature toward unity *for* purpose,

and the authority assumed to be capable of redirecting this tendency, are both instances of the contractual relation which we have seen operative throughout nature as the centripetal tendency of fact under law. Corporation is then the law of life, and life creates and dissolves its own forms. The corporation is then not originated at all but is natural. Its powers and rights are individual, but not those of individuals: they are the powers and rights of the Individuality which is the law of the whole. Rights of corporate bodies are personal; but they are personal to the body as a whole, and not to the natural persons who serve it or use it or abuse it as parts.

IX. SUMMARY AND RESTATEMENT OF THE PROBLEM

A contract, then, as a relation among persons, is a recognition of the mutuality of their end. It is the tendency to large scale functional organization of persons. It is the principle upon which an agreement with respect to the synthesis of proximate and immediate interests in a whole of value is reached, and where this synthesis as purpose is incorporated in an objective instrument or means. It is the process through which, in a given disparity of purposes among persons, these may be unified in a larger end in such a way as to fulfill each. Since the unification of varying or divergent purposes will call for the modification of each, a contract may be defined as the law of growth by which undefined purposes develop into adequate means, and on into satisfying ends. It is the process through which interests become purposes, and through which purposes become objectified as ends. In the widest sense it is the law expressing the relation of means to end in general, and as such is conceived of as a practical principle; but as such it is also designative and definitory of ends, and is in this aspect constitutive of the end as good. In the first case it is thought of as the active principle of growth operating through the interests and relations of men and converting the raw material of discrete interests (an interest is an incomplete and not fully rational purpose) into first adequate means and then into refined products as values. In the second case contract envisages or connotes a system of ends refined through growth to a degree of perfection and held in a permanent symmetry by the law of their nature. The

reality of the real is its esthetic wholeness. It is through these two characters that contract is the instrument of stable order. The social whole is by contract rendered stable as a system of finished ends which operate as a balance to discordant tendencies, and at the same time as distinctly an order the whole implies that the system of ends continuously maintains itself by reproduction and the acquisition of new members. It is in this sense that the 'social contract' or compact theory has had the strength to maintain its hold upon men's minds for so long. It has been recognized as the dual capacities of permanence and stability and of ordered growth; and has thus provided for the two characteristic motives of life. It is sound doctrine, since it rests upon ultimate fact. But this does not commit us to all that has been said in its name or all that has been interpreted into it by special interests of theory. The contract theory as representing the motives defined above, however, could not and did not survive the obligations put upon it by the individualism of the past centuries. And as the institutions of life, as they now exist, are the products of the contract idea as perverted by individualistic atomism, the contract idea as the spirit of life is at odds with the system or body of institutions through which the spirit is supposed to find expression for itself.

The problem for social, i. e., political and legal, theory is therefore to find the principle by which the institutions of life can be made the adequate instruments of the real spirit of contract. The practical principle upon which legal and political theory seems to be based, as a method of adapting the institutions to the purposes of life as represented in the contract idea, is, as we have seen in the preceding chapter, that of property. And we saw there that the proposition that property is the practical principle by which institutions can be adapted to purposes is theoretically sound, but that the difficulty with it is that property is itself in its personal aspects distorted by historic presuppositions about the nature of the individual. We then saw that property had to be interpreted as an adjunct of the personality, that property is peculiarly personal in its status within the social body, and cannot be made the instrument of law when considered simply as masses or collections of abstract things. It thus turned out that property became an element of principle when it was found

to operate as the criterion of individuality or the principle of individuation, and as the discloser of the real nature of individuality. Thus the discovery of the nature of objective institutions, for property when objectified by law becomes the system of public institutions, the discovery that in essence the objective and permanent institution is itself a degree-form of individuality, and the explanation of this degree as a personalized end makes the question of institutions itself one of the nature and distinctive characters of the Person. But institutions as systems of property implies that the practical question as administrative is one of matching property masses against each other with reference to personal ends, and in this aspect the personality is expressed through exchange and the system of corollaries of exchange which make up the science of economics. The personal aspect of the process of exchange then came to be interpreted as the "meeting of wills," and the psychological investigation of this phase tended to separate the personal aspects of property from its aspect as means, and the theory of contract became a speculation about the matching of isolated and distinct psychological motives, wants, etc., which were thus taken to be the essence of personality. But here contract became meaningless.

The question then as to how the institutions of life can be adapted to the real personality as contract or consent or assent is a question once more of the relations among personalities. Masses of property themselves become personalities or at least impersonated individualities, and as institutions are primarily property, the relation of personality to institution is one of degrees of reality which are principled by the same law. It is this deduction that constituted the justification for the attempts at a definition of contract given above. Contract is the principle through which personalities objectify in a common end, the law by which the synthesis of persons is effected in the Person. It remains now to show in more detail what the principle of contract means in human relations, and to state some of the corollary principles which follow from the definition of contract as given.

X. CONTRACT AS THE PRINCIPLE OF INSTITUTION

The central fallacy of individualism from the practical point of view is the assumption that interests and ends and

purposes of persons are necessarily and in the nature of things incompatible with each other. It is the assumption of exclusiveness as the essence of the personal character; and while most theory attempts to avoid the crudities of the assumption, the idea of exclusiveness as uniqueness or some other equivocal term governs perhaps all social theory. How the idea that interests are by nature all antithetical should have arisen seems difficult to explain, unless interests are identified with the objects of property considered as mere material. A and B cannot both at the same time own or at least possess the same bushel of corn, if the corn is considered as internal and subjective to the nature of the person as is assumed in the definition of property as the means to the satisfaction of wants. But this as we have seen does not fairly state the nature of property, and, at least neglects the necessary distinction between property that persists in use and property that is used up, and confuses property as personal with property as private. The latter, we saw, is not property in the strict sense, or is imperfect as a mere indispensable, and is the aspect of property by virtue of which it merely satisfies wants; while real, i. e., personal property has no necessary relation to wants but is the instrument to purpose. At this point another difficulty comes from confusing interests with purpose. It is this subjective fallacy of exclusiveness, then, that is to be avoided in the discussion of social relations. We avoid it in the case of property by finding that property as objective *is* the person, or at least *a* person. We have also avoided the difficulty in the subjective sense by distinguishing mere motive or interest from purpose, the latter we saw being objective and common in every case, and never private and specific to a given individual, as interests always are.

Contract then is the law of the relations of persons. Salmond's distinction between contracts and grants ¹ hardly seems valid. And persons are not restricted to psycho-biological entities. A person, or, in general, an individuality, is a situation of fact ordered with respect to an end, the end being the same situation of fact ordered in higher degree by the principle of growth through its own distinctive type of order. This principle we saw to be that of individuality, the con-

¹ *Jurisprudence*, p. 308. He goes on to show (p. 309) that agreement is often of a "mixed nature."

structive or constitutional law of order in the world. There can be therefore but one type of order, and, as a consequence, realities are all of a kind, differing only in degree, and that type depends upon the positive constitutional aspects of facts by which they in nature come to synthesis in an end. There can be then but 'one' law, or law is the universal. It is clear that this principle is not exclusiveness; the fact either of war or industrial competition in human relations is sufficient to dispose of that superstition. And it is not inclusiveness, as is shown, e. g., by the mysticism and rhetorical interpenetration of Bergson, or by the platitude mongering of certain sociologists. That the principle is neither, or that the inclusion-exclusion muddle has nothing to do with law, is shown by the demonstration of the limitations of the inclusion-exclusion dichotomy in logical theory. The principle will have to be found as the objectified practice of men as that practice sublimates and precipitates in institutions. Thus the institutions that are now in process of their earlier stages of growth ought to show the synthesis which we can properly call contract.

The industrial corporations of a practical sort which have appeared within the last century and which we have taken as types of personality, can still be observed in process of formation, and some of them show great promise of a more satisfactory type of social function. They have demonstrated that the personality when principled by the mere motive to mathematical increase, or, as it is stated in modern ethics and politics and law as the motive of desire, or want, or claim, or interest, or right, can accomplish only one of the two constitutive elements of personality. The motive to profit or gain, which is the practical expression of interest, and which is the primary motive of individualist industry, results in a superabundance of unordered matter, and this matter it conceives to be held in status by force. But it cannot succeed in impersonating or ordering on stable principle the matter which it collects. Another type of corporation is therefore being developed to take the place of the prevailing type, and it is to this that we must turn to correct or at least amplify our conception of corporate personality and to find the principle of individuality in the idea of contract. This principle must not be confused with the principle of individuation which is the principle of

distribution of individualities, but must be understood as the constitutional principle of the nature of individuality.

The prevailing type of corporation is ordinarily organized by a small group of persons for the performance of some highly specialized and technical industrial function, this function being conceived as a synthesis of private interests. It is however generally forced to appeal to a wide number of people in order to obtain the large sums of money needed. It has the appearance therefore of a large group of persons whose wills have 'met' with regard to the purpose indicated by the processes of trade, etc., which the corporation will carry on. As, further, the object which the corporation produces is generally of wide use, the corporation can point to its operations as necessary and as fulfilling a social or public purpose. These, and similar arguments, make the corporation appear as a benevolent necessity of modern social life, but a little examination of the facts shows the contrary. In the first place manipulation and "reorganization" often succeed in dispossessing the majority of the stockholders to the advantage of the promoters, while the corporation's 'moral' integrity before the public is maintained by the exploitation of a wide distribution of stock among its workers, each of whom may be forced to purchase a share, by contract or by high-pressure advertising. But whether the stock is held by operatives or promoters or by the public at large, the persons involved never 'meet' in the sense that they come to have a common and conscious purpose to do an act together. Their interests center in the result of an act, while the moral quality of the act does not concern them. Their only 'common' purpose is the general purpose to profit (which by the way is not a purpose but an interest), and is general in the sense that an instance of the profit motive can be found in each stockholder, but the instance of the motive in one has nothing to do with the motive of another, hence there is no common interest or purpose, and hence no end or order of the whole. Moreover, the product is often an incomplete object, a 'part,' and it carries no suggestion of an end as a whole which the corporation should have been and avowedly was organized to create. It is true that the object or part produced is of public use, but its public use or usefulness is not the conscious purpose

of any person engaged in its production. There is therefore a divorce of means from end, in the confusion of interest with purpose, which converts the productive activities into irrational blind processes which have no end. The corporation is therefore a vast falsification, and its social effect is now recognized as divisive and negative and disintegrative rather than synthetic and positive. Often its very life depends not upon its social or public utility, but upon advertising which is quite generally false. The ultimate criticism of industry from the practical point of view is the fundamental falsity upon which it rests at every point.

But corporations are nevertheless institutions and hence as persons possess the character of permanence, possess 'personal immortality.' This is the answer to the demand for their dissolution. They are fixed in the nature of things and their corporal 'punishment' would defeat its own end just as such punishment does in the case of natural persons. The difficulty is that as corporate bodies they are principled by a generalization rather than by a law. This means that their stability is in their matter and not in their form or principle as it should be. They maintain themselves by their mere weight, that is by the difficulty of finding and establishing something better. We saw that they are maintained by the mere like-mindedness due to similar interests of the people involved, but that this fact gives them no definite organization since it never comes to the form of a common purpose. It is the reason why such bodies must be chartered by the law or must get a statement of their activities, functions, rights, obligations, etc. from outside their own constitution in a law imposed by a higher authority. That is, there is no natural and spontaneous 'will' to unity in any aspect of the whole, and such permanence or dependableness as they furnish is in the matter and not in the order. They are unprincipled. This is, once more, the reason they must be legalized; it is vaguely recognized that their order, such as it is, is inimical to the purposes of the whole, and the attitude which the whole must take to them is one of regulation and suspicion, since the whole vaguely knows that its good will come from the corporation, if at all, only incidentally and as a by-product. The industrial corporations therefore never intend a real end, and hence cannot be founded upon true principle. They are imperfectly individuated.

The permanence of the corporation as real must consequently be founded in principle. And real principle is positive and constitutional. Hence the principle which is real to corporations must be derived from the method of their organization and must be natural and immanent in the individualities of which the corporation is the organized body. This does not contemplate a reference of them to their 'origins.' The real has no origin. Its reality is in its rationality, and not in the place or cause from which it is derived. We have now to look into the constitutional law of a corporation rightly principled, the law which states that the end is implicit in the primitive positivity of fact, in the creative necessity to the fact of an order which sustains it as fact. That is, the positive and dynamic or executive character of fact in distinction from the negative classificatory aspects which furnish the basis for scientific description must be found as the ground of the law of the real corporate person. It is the character of fact by which it is guaranteed permanence in the relations which its quality shows it is capable of entering into. The real corporation must be described as a growth, that is, as the progressive definition of self-subsistent fact-systems whose integrity within themselves is maintained by the same principle that unifies them as fact-systems into larger wholes. The corporate body as such a person then will proceed out of the common factor of principle which sustains each 'part' individually, as that factor, becoming law, transgresses the limits of the part and identifies with other factors in the larger unity. This tendency to fuller individuation by parts becomes the contractual relation as the expression of will. There is no suggestion of an aggregation or agglomeration of independent entities held together by an external bond or relation. No such bond of relation, existing, as it must, if it can exist at all, independently, can be found in the world of fact. And this disposes once for all of the conception of law as the mandate of a 'higher' authority, and with it the whole conception of authority must sooner or later disappear. As a growth the corporate body forms from within outward by the executive power of its will. The executive power of will is then the contractual power operating among individuated agencies to identify them into wholes with reference to public purpose. The most perfect instances of this process is the large number and variety of co-

operative organizations which at present are springing up everywhere. There is an element of negativity in them in that they appear as protests to the inadequacy of existing interest institutions, and in so far as they merely serve a corrective purpose with respect to existing institutions they will copy the virtues and defects of the latter. The co-operative organization is to a degree a cure for its inherent malady, since it arrests the tendency to hypertrophy in the profit 'institution.' But in merely arresting the tendency it only postpones the inevitable evil, hence the co-operative organization as a negative function corrective of existing evils has little promise for the future. It is the 'revolutionary' co-operative, the organization which ignores the prevailing interest principle of organization for a principle of positive reconstruction, which gives insight into the forms which future social institutions will take.

The instructive thing here, and the situation that is important, is the process of fact through which the wills of persons, both natural and corporate, come to unity and to objectification in new social instrumentalities. The common fallacy of theory on this point is to attempt to give a strictly subjective interpretation to the facts, or rather to neglect true positive facts for the subjective processes which are assumed to represent them. Persons do not argue or talk themselves into significant unity, as is assumed by the consent theory; they enact themselves into unity. This subjective approach forgets that nothing real can be explained through a description of mental states, that mental states have by themselves no meaning or constitutional power. On the other hand, the opposite fallacy which is almost equally common, consists in placing emphasis on material processes and objects, and in assuming that mental states are mere inert shadows of those objects and processes. An instance of the former can be found in an otherwise profound study of the impulse to order in human society, Miss Follett's "The New State." In taking the deliberations of a committee as an instance on a small scale of the way in which wills 'meet,' she is able to illustrate perfectly the method by which minds come to a common idea, considered as a subjective purpose. But the resolution which the committee adopts is likely to be taken by the committee-members as the complete and sufficient act of the committee, and

the act is assumed to have been given full objective form when merely formulated. The delivery or expression of the resolution therefore exhausts the process, and a purpose becomes buried in a state of mind. Miss Follett assumes, of course, that action follows formulation of the idea; but a real idea enacts itself in its deed through a growth and not as a consequence. The method is similar to that of the traditional 'good will' which seemed to be under no obligation to manifest itself. That the process is an excellent illustration of the intellectual procedure by which an object of will is subjectively defined, or an illustration of the subjective aspect of 'intention,' will have to be admitted. But it is insisted here that the real idea as formulated end, or the intention as the scheme or plan of an act, in the sense in which either can be described as internal to the facts, must be shown to be immanent in the facts whose layout expresses the demand for organization, and that their reference to the subjective processes of an isolated individual or of a collection of individuals is a misrepresentation of those facts. Real order is objective, and as such is *in objects*, immanent to objects, organic to them, constitutional to them; and objects are not reducible to states of mind by processes of subjective agreement or otherwise. The committee's report therefore will suffer from the defects of the processes by which it was reached and adopted; it will be an abstract formulation which will never get real form so long as it is dissociated from the 'hard' facts to which it is intended to give order. The merely intellectual conclusion of an argument participated in by many minds is hardly what is meant by the principle of contract on a basis of which human organization rests. It lacks the executive forcefulness and 'body' which is characteristic of the activities of human groups in their actual inter- and intra-relations. The contract is not complete until embodied in institutional form, hence can only be observed in active institutions.

A similar difficulty is to be observed in another profound book. Dr. Figgis finds ¹ that political liberty was accomplished as a by-product of the struggle for religious freedom. This suggestion confirms, by the way, our principle that will attains ends objectively and on its own hook and independently of the

¹ *From Gerson to Grotius*, Cambridge, 1916, pp. 6-7.

conscious motives or intentions of the human beings through whom it works. But it would hardly seem fair either to politics or religion to assume them separate and distinct as this conclusion seems to do. It is hardly just to politics to regard it as the order of 'worldly' objects and purposes principled by no reference to the laws of spiritual right, even if in the actual affairs of states this condition seems to be literal fact. Nor is the implication that religion is the purely subjective and 'spiritual' objective of inner purposes and aims of 'souls' quite adequate to Dr. Figgis' own conception of religion. Nor is either the political or religious implication of the conclusion borne out by the argument of Dr. Figgis' book as a whole, which seems to carry the burden that religion is just the immanent principle in the order of fact—things, persons and relations—which is political life. The principle of an order must be inherent in the fact-system ordered; it is the contractual tie which binds the element of fact in an order which thus attains the aspect of end.

The contrary fallacy runs to materialization of fact-systems which have as material no close kinship with principle at all. The motive here seems to be the fear that principle will become 'real' if made organic with fact, and that would require that fact share the characters of reality with principle to the detriment of the former. What is obviously the aim is to avoid the extreme tendency toward mental states as suggested above, and this critical and negative attitude even if it can be given no firmer foundation, will furnish a meaning for the "materialistic interpretation of history" until a proper and adequately objective interpretation of history can be laid down as the basis of the practical life. That this objective basis in a form which avoids materialism has not been provided for the sciences of politics and religion seems evident. And such an objective foundation for ethics and law is still too weak to withstand the waves of either the political or religious emotionalism which come from commitment to mental states as the fountain of all values. But the 'socialism' based on a crude and negativist or distributivist theory of property will thrive until the objective basis for politics is worked out.

Obviously, then, the principle of order in social life is not the contract which rests upon abstract relations of matter,

as implied by economic theories, and enforceable by threats upon the property-right assumed by the law. Nor is it the contractual order which can be maintained by one type of mental state and destroyed by another, as sociological theories assume. In the one case the social order is founded on a rock so hard that it will fail of proper sustenance, in the other upon a sand so shifting that it cannot maintain the degree of permanence necessary to its reality. The type of co-operative organization, the corporation of the future, is one which avoids both abstract things and mental states by incorporating them as matter and principle in an object as an end. The end in this sense is their synthesis, so their distinction can be neglected, and our attention directed to objective social fact.

XI. THE CONTRACTUAL PRINCIPLE AS THE CO-OPERATIVE FUNCTION

Beginning then with the fact as observable, the significant tendency is to be seen in the various trade organizations of 'workers' on the one hand and employers on the other. From this point of view contract is a principle of the social distribution of function. The religious and the political organizations and "institutions" of the present are the remnants of body left on the shores of progress by defunct mental states, they are the sad memorials erected over the last resting places of departed theory. The actual governing bodies in modern states are the active trade groups together with "associations not for profit" but very definitely "for" palpable objective ends. The ostensible government is too often a debating society designed to perpetuate the memory of political theory by eternally seeking to display the distinction between soul and body in a 'mental' phenomenon where there is neither. This is a perversion of the real function of government, which really is talking, legislation, the determination of what is just. These trade bodies are not formed because of the insistent demand of some great "ideas" for embodiment, they are not the result of exalted purposes conceived as existing antecedently to their embodiment. They are not created out of theory, but such theory as they imply succeeds them as fact. Nor are they results of processes fatalistically determined by 'facts' independently of the intentions of men. They grow up within the

common medium of life where all these elements are found intermingled, but where no one of them has causal precedence over the others. They grow up out of the necessities of cases, without thereby being necessitated in the traditional sense, directed by the will to order toward an end designated by the exigencies of the cases of fact involved. Thus the facts of the situation in which coal miners work define the ends which must come through order, ends which will be the issue and supersession of that state of fact out of which by definition they arise. The ends are therefore prevised improvements upon states of fact which are unsatisfactory from any cause, but they are not mental nebulae imposed upon the existing facts, nor is the prevision a modification of the ends from without. A given end is the state of facts presently existing in the form in which it will appear, a situation in which two stages of growth are now related to each other as means and end. As such it is dynamic as a purpose, but the executive purposiveness comes from the inherent tendency to order in the fact and not from the 'mind' of some external observer whose relation to the situation as conceived in theory cannot be stated intelligibly in any possible terms. It is of course true that 'mind' is an element in all fact, but it is only as an element of fact that it is effective; it is not effective as abstracted from fact. The miners' 'mind' is therefore made up out of the institutionalized aspects of his life in the way described in Ch. III, and the real will of the miner is the principled tendency to order in those institutions. The will will be rational or otherwise in proportion as the institutions are or are not adequate to the attainment of objective purpose as purpose is defined in present fact, since the will is just the processional aspect of those institutions. The miners then organize in a union just because the organization is the objective necessity of the total state of fact, a state of fact which will carry predominantly unsatisfactory consequences until adequate objectification is achieved. Given a state of fact of the opposite nature and the present organization would never have appeared—a satisfactory state of fact would perhaps have objectified in a benevolent institution just as comfortable and socially useless ladies congregate or gravitate into charitable organizations. The organization therefore states the situation of fact which exists in the form in which it would appear if it

were adequately principled. This is the 'origin' of right. It is the normal and necessary form which a status of fact must assume, since every state of fact has "legal consequences" or creates legal consequences, in the sense that fact is unintelligible in the absence of law or principle. The union therefore grows up as a consequence of the legal aspects of a state of fact, as the necessary objectification of the elements of principle that are inherent in every state of fact however disordered. Negatively, the union is not the ugly spawn of the wicked will of the miner or of the agitator, as individualist interpretations tend to make it.

A similar process of growth differently principled results in the commercial organization. A meeting of wills as the same process carried to the point where the union and the corporation will fuse in the public instrument of a public purpose is an instance of contract operating as a social function. Contract, then, as an instance of law, is a case in which seemingly divergent tendencies of fact-systems incorporate in a social institution; it is the process of integration within the social whole.¹

But this fact carries two important consequences. In the first place, it is a necessary corollary of the statement that a co-operative organization arises spontaneously out of a state of fact, that the organization is legal in a far more important way than if it were established by legislative enactment. This spontaneous urge toward order is contract. The legal ground of an institution is in the nature of things, is the nature of things. The difficulties involved in the attempt to compel an organization to behave conformably to statutory requirements, as, e. g., in our 'trust busting' expeditions, ought to convince anyone that the fight is to the finish and that the advantage so far is on the side of the organization. The truth is that the organization is as overt fact just the natural and appropriate order which the facts will take in any case by virtue of the aspect of legality in the facts themselves, the tendency to order in the absence of which the facts themselves would not exist. And law has authority and sanction only as

¹ On the question of the social interest in contract, cf. Pound, *The Spirit of the Common Law*, pp. 186-7; *Introduction to the Philosophy of Law*, p. 63, 236f; *Interpretations of Legal History*, pp. 162-163; and especially Duguit, *Progress of Continental Law in the 19th Century*, pp. 122-124.

it is expressed as adequate principle of facts. Legislation with reference to the organization of such bodies should therefore represent a profound knowledge of the characters of the facts organized, since these characters will in any case determine the law according to which the body will live and act. Such acts should be, in fact can only be, merely enabling, permissive acts. The whole structure of agencies of control, as also the idea of control itself, are out of joint with the fact and can only result in confusion and strife so long as they continue to interfere with the natural modes of objectification which the states of fact lay out for themselves. The law is itself the consequence of a state of fact, which means that it is the normal process through which the state of fact maintains itself and attains to the form of its end. Proper regulatory measures would therefore seek out the means to the furtherance of that process toward the most appropriate embodiment in organization and if the law must remain a negative entity and if it must act in a restrictive and repressive way, its function would be to "hinder the hindrances" of the process and to make the way clear toward the appropriate object. But as the 'hindrances' are in every case just the natural and normal efforts toward embodiment on the part of other states of fact seeking their ends, the negative operation of law will mean the throttling of some tendencies to organization to the advantage of others. Law as negative is thus the enemy of free contract. But this would mean that some human purposes are doomed to remain unfulfilled, and this implies the idea of the human end as attainable only by the abandonment of part of it. Once more the negativist theory of law comes to contradiction.

Since, therefore, the negative and regulatory attitude of the law toward the organization of human groups interferes somewhere with ultimate purpose, as must all operation of law that is imposed from without, the proper attitude toward such organization would be one of carefully working out the principles upon which such organization depends when it represents the fullest and most adequate appropriation of the instruments of life to the ends of life. Legislation is thus a process of speculative thought. Corporation law is not the sum of ways and means of regulating or controlling natural organiza-

tions by laying down prohibitive and restrictive bounds which they must not trespass, but a system of principle suggestive of opportunities to action and indicative of ends appropriate to the full fruition of action. Instead, then, of saying what a given organization may not do because in doing it it would infringe another organization's rights, the law of corporations should find ways whereby all the purposes of all the organized persons may be fitted together in a system the harmony of which is the sanction of the law. The law of the nature of fact, that is, should show itself fulfilled in the system which is the natural complement of the tendency to order which is the essence of contract. The function of the lawmaker is accordingly performed fully in the intellectual effort to formulate rational systems of principles under which all tendencies to spontaneous order can contract themselves into their full objectification. And it is this legislative spontaneity in the 'subject of right' to which the doctrine of contract proposes to give full and free scope. The contract relation is not therefore an artificial scaffolding of relations built up by mutual concessions in the form of stipulations between uniquely isolated entities, but it is the active principle of order operating within the subject of right by defining purposes and prevising means to their fulfillment. The same force of principle which maintains the constitutional order within the subject of right, what in the ethics of the individual we would call the operation of intelligence maintaining the balance of character, becomes the principle of unity of subjects of right into more expansive and comprehensive or compendious personal organizations, the order of which we call the social order. Thus, the law of the nature of immediate fact is the law also of the orders of more comprehensive character into which immediate facts are synthesized. It is thus that the difficult question of the relation of the individual to society and to his world finds a simple solution in the interpretation of the immediate characters of the most obvious facts.

Again, and negatively, the organizations which have grown up and assumed the functions of government are not products of the fiat of will of natural individuals. It would of course be extremely simple if an outlaw organization could be attributed to the wicked will of an 'agitator' or to the superhuman

cunning of a capitalistic promoter. The organization could then be destroyed by the disciplinary correction of the will of its founder, and it would be possible to justify the mere primitive instinct to punish which seems to be the basis of the criminal law. Or, in case the organization demonstrated its naturalness and utility, we could elevate the founder to the position of a popular hero or 'leader' or to the position of the benevolent fathead whose oleaginous goodness beams benign charity over the mechanism which he is supposed to have created. But the doctrine of good and bad wills of individuals as the causes respectively of human accomplishment or failure is so palpably out of joint with the facts of life that it can be left to its own contradictoriness.¹

The formative principle in human arrangements is then the law of contract as it operates in the constitution of individuals, and among individuals as they constitute themselves as higher individualities. It is the assent of the 'parts' to order in the whole; the 'social compact' being the expression of the law as it operates to synthesize individuals into individualities of higher degree. It is 'free' in that it is characteristic and distinctive and unique positivity of fact which in other terms we have described as the tendency to order. It 'binds' the individual to the internal harmony, and individuals to mutuality of obligation proportionate to the reciprocity of functions which gives them status in the larger whole. It as principle proceeds from within outward, and it extends as far as objectification is required by the purpose from which it proceeds. Judicial decision in a case involving contract necessitates the stating of the case as a whole of fact, and the determining the various parties to the contract. The law is then the rational order of the whole and the execution of the law the promulgation of principle. It is not created by the fitting together of the externals of individuals, and it cannot be controlled by any external force or authority. It is that out of which all power and authority issues, and is consequently not subject to it. It is free contract. It is not due to the fiat of individual wills which 'meet'; but is created as the legality of a state of fact, is the legal consequence which the state of fact means.

¹ For a discussion of responsibility as a social phenomenon, cf. Paul Fauconnet, *La Responsabilité, Etude de Sociologie*, Paris, 1920; Saleilles, *De la Personnalité Juridique*, Paris, 1922, pp. 333, 339.

XII. CONTRACT AS SOCIAL PROCESS OR PUBLIC FUNCTION

It is of course self-evident that if contract is to be realized in the sense in which we have described it, many of our basic institutions will require to be modified. This necessity gives rise to the most difficult question of all. We have attributed to institutions the source of the spontaneity which is responsible for elementary growth changes. It now seems necessary to say that fundamental institutions themselves require to be changed, and this implies a spontaneity outside of institutions which exercises control over them. It in any case forces upon our attention the very difficult question of control as employed in public affairs, and this question will have to be met in so far at least as its neglect would imply inconsistency in our system as a whole.

By way of approach to this problem, a few distinctions may conveniently be repeated here. If we ask for the real essence of meaning implied by the term control it will clearly appear that the term has in view the direction of present processes to the ends in which those processes find the stability and permanence without which the mere process becomes infinite. Process as the absence of ends means just the indefiniteness and uncertainty of a thing which seems never to be what it is because what it will be never appears as the completion of the present uncertainty. The process is infinite therefore so long as a rational harmony cannot be established between its mere movement and that into which the movement by its sheer continuity strives to issue. Control refers to the means through which the mere infinity of process is given substantial permanence of meaning in the idea of the whole where alone the process could find any meaning, even that of its continuity. Stated in other and more familiar if misleading language, it is the process of adapting means to appropriate ends, or of appropriating means to ends. But if so, control is a rational process as involving primarily distinctions of value, and in that it undertakes to make reference to the real, becomes the question of the rationality of the relations among the various forms of individuality considered as values. The question of control becomes then one of the relative stages of reals. But as individuality is the real, it refers to rationality as the law of reality as such. Then the question of control is the question

of the relative position within the system of reality as a whole of the various forms of individuality. Control is then, in the first instance, a speculative problem, and implies the "seeing out" of ends which as legislation, we call the rational definition of ends. In practical terms it is the question of defining that province of right which is special and appropriate to each form of individuality. The question of control is then the question of the administration of justice, which, it must be remembered, is the "determination of what is just," a matter purely of the discovery and definition of principle. Seek ye first the Kingdom of God, etc.

What we have to find as the essence of contract is then the very principle of individuality in its widest form. This is the question of that aspect of individuality which gives to it its rationality, which gives to individuality its universality by virtue of which its various forms constitute a system or whole. It is the capacity to possess the end while as yet the end is only implicitly present in the facts presented. That is, the capacity to make use of the end while the end is yet means, is yet unfinished and incomplete and only imperfectly defined, the capacity to see the end in the beginning and to associate the two as the ground of action, is the power of active synthesis. The power of control then lies where thought is most clearly and fully apparent as the agency of adapting means to ends. The question of control reduces therefore to one of the creative capacity of thought. This capacity is present in every process of intelligence that involves inference or interpretation, and as action is a form of interpretation, a degree of control is automatic in action. But in proportion as action approaches mere motion, it is necessitated. As speculative thought it is free contract. In a case of inference, the act of mind through which a meaning is attached to a fact is the determination of the fact toward its own fulfillment in the meaning which is appropriate to it. The fact is therefore changed to the extent of the new relation established to its meaning and it is by so much nearer the end which time and cause shall later provide for it. But it is to be kept in mind that the new relation of meaning attributed to fact is, as the phenomenon of purpose, just the precondition to any influence which either time or cause may exert, and is on this

account the ultimate determinant of the nature of the end into which fact issues.

The 'knowing' of a fact is then the connecting of the fact with an appropriate meaning, and the process is in the end the ground of all control since it is the condition of change. Control therefore resides where the end as interpreted meaning is seen as the natural complement of a state of fact, and, where the relation of a state of fact to end is realized in its fullest form, there resides the prior right to control. This seems to localize and domicile the right to control where there is 'most' intelligence, but such a quantitative reference to intelligence has no meaning. It is certainly not meant that control lies in the hand of the expert, or the individual with the narrow technical intelligence, but it is implied that it rests with the individuality with which, in the highest degree, there must be associated the comprehensive idealizing capacity to see ends in facts. But this individuality is a species, and not an isolated fact, it is individuality as universal and not a mere instance of it. The right of control therefore rests with the form of individuality in which the knowing function is most fully developed, the class of developed natural persons.

This is saying that man should control institutions to the effectuating of his purposes in proper ends. And since institutions have been described as superior and plupersonal forms of individuality, seems to suggest the control of the higher by the lower form of individuality. Control is not exercised over persons, however. It is the adaptation of material instruments to purpose and while persons may be used thus as means, they are means and may be so used only when use implies the ordering them into objects which are altogether void of implications of privacy, and when their order itself constitutes a completely individuated whole. Such a completely individuated whole is a group of persons who by common experience and common ideals have attained a complete interpersonal order—"the fellowship of kindred minds." Political control has then no reference to restrictive regulations as imposed *upon* a people but implies the free action of a people through their common unity attained through common ends ordered as institutions. This conclusion is derived from the predominance of reflective intelligence or power of inference in man.

This does not mean that the rational faculty is stronger in man than his other powers, but means that the rational or critical capacity is more highly developed in man as a natural individual than in any other form of person. But it is also implied that other forms of individuality 'possess' mind, in the sense that their organization implies free capacity to act or will, and the proposition is accepted that all individualities possess mind in this sense to some degree. It is not assumed to be worth while, remembering the discussion of will, to argue the question further than to say that the same facts that constitute the evidence for mind in one form of individuality also furnish abundant evidence for its presence in all other forms, and that to demand a specific connection between mind and any form is to demand that the universal be identified with one of its instances. This is the fallacy involved in attributing unique worth and exclusive dignity to human beings.

The question as to *how* man is to control institutions has by implication, at least, already been answered. Control is effected through the determination of ends within present fact. The process of determination of ends is the process of ordering fact into systematic arrangements, which becoming principled in utility, assume permanence as the institutions of social life. Remaining more or less rigid and fixed in the substance of life while the life process flows on, institutions become established instruments to the accomplishment of universal purposes. They become therefore incorporated into the body of the law of life, and require modification only as and in so far as the life process has defined ends incapable of complete attainment through the means of institutions as they stand. In a period of low development of critical intelligence institutions are very properly practically fixed, as in the case of the regulation by custom of the hypothetical primitive mind, and the fixity of institutions is primarily in this case the obstacle to the development of intelligence. It is true also that in a sense institution is the instrument to the development of mind, and, at the same time, but in another sense, the limit beyond which its development cannot pass. But this gives for theory no special difficulty, since it is merely a case of the necessity that mind be embodied in a form which is at the same time both end and instrument. It is this fact

upon which our principle of the real as completed and embodied in a form of itself rests, and this, as we saw, is the explanation of the relation of means to end as the relation which expresses the dynamic aspect of reality. And, as we also saw, this is the ground of the concept of life as law, the concept which states that the integrity of life lies in the creative aspect of effective embodied order or organization.

But the concept of control as reduced to terms of law through which alone it can acquire effectiveness, means that control is a social function. It is social in that the function attaches to the individuality and not to the individual. That is, it is a function of the interrelations of persons as persons integrate into higher individualities. It is this connection of the function of control with the individual conceived as exclusive unit which has made modern practical thought the slave of authority. It is the worship of authority which has brought both political theory and practical politics to the sorry plight in which they now lie; and, while the concept of authority as a strictly political concept has been progressively abandoned through the achievement of political liberty, the old intransigence of private privilege did not disappear with it but fell as an inheritance upon the modern practical man. The attitude of mind which gives the opportunity for the deification of authority must either be rationalized or destroyed; there is no place in the world of mind for authority in any sense in which the term has as yet been defined in theory or in practice employed. The 'power to control' which is implied in the social contract is nothing else than the moral weight of the organization of the society as a whole as it is thrown against any tendency anywhere toward disintegration through the development of proclivities toward privacy, or as it appears in support of the newly forming relations which provide for the expansion of the whole in wider spheres of action. Every contract of a specific sort therefore, in that it requires the support of the organization as a whole, that is, in that it requires to be made lawful, thereby strengthens and expands the integrity of the whole, so that the social body derives its life from the appropriateness with which its elements are brought into contractual relations. But contractual relations do not imply relations between mere parts as parts, but relations that integrate parts into wholes. Contract is then

essentially the exercise of influence upon the specific structure by the constituted order of which the specific structure is a part. Within the social tissue structures acquire specific values primarily as institutions, and the growth-directions of institutions are resultants of the influences exerted by the various aspects of the social Person. Control as a social function appears in one aspect as a mere impossibility largely because we are accustomed to think of 'authority' as concentrated in an individual, and it is of course contradictory if we are to continue to think of the social body as a mere collectivity, since in this case there can be no order. Control implies a closer unity and a more compact integrity than is suggested in the mere collection, and the collectivist or 'group' explanation of society is, as we have seen, the necessary logical implicate of the isolated unit of individualism. On either the individualist or the collectivist view of society an abstract external and absolute authority must be postulated, since the repetitive infinity of disintegrating process is a logical necessity of both. There is therefore from neither point of view any possibility of order or systematic wholeness within the fact-bodies they presuppose. And in the absence of the system of principled fact where ends can be seen in present fact, the idea of control has no assignable meaning. Control is therefore the prerogative of the social whole, and is coterminous with the ground of right as that ground is identical with the legality of fact, the principled order of fact which converts a collectivity into a system where law is the universal bond of unity.

Contract and the 'power to compel' accordingly signify the entirety of mutual relations which make up the body of law of the whole. And when we have shown that the power to compel, which is the legal or universal form of the concept of control, is a function of the social whole, we have also shown that the characteristic form of contract is the social contract,¹ the weaving together of social functions with regard to a common end. But the concept of the social contract in its historic sense is already obsolete, and it was the covert assumption of the historical nature of the fact as a pact actually entered into and to which the term referred that rendered the concept inadequate. The social contract is a philosophic regu-

¹ Cf. Duguit, *Law in the Modern State*, trans. by F. and H. Laski, New York, 1919, pp. 118-122.

lative conception; it is a contract among societies, not a contractual bond among individuals which is conceived to be originative of society, and it refers to the element of law which individuates facts through their universal aspects, and it makes no reference to specific historical occurrences. The social contract therefore refers to an ever-present *character of fact*, the character whereby the relation upon which contract depends as large-scale relations among already 'socialized' bodies is universal; as a consequence of which the 'parties' to the contract must be interpreted to comprise all particulars within a given system which can stand in that relation, including the system itself as a whole. Not only is it true that the whole is concerned as a party to every conceivable contract, but it is equally true that each particular person, whether corporate or natural, within the system where the contractual relation holds is also a party at interest to it. This is due to the fact that right is determinable only in the universal, hence, the right is the principle which embraces the particularity of all persons. Contract is then a law of the whole, and the *personal* spontaneity which gives it its sanction of right is the prerogative of the *social* person.

It follows then that the real contractual relation, which is the social or universal relation, finds its more significant embodiment as the bond of unity among relatively complex groups acting in their personal capacity. The important contracts, as was hinted in another connection, are those which represent the coming to some degree of unity of 'classes' or orders of persons representing large social functions. These classes or orders are themselves persons, and as such 'contract themselves into' their freedom, just as the exclusive individual finally 'contracted himself out of' the last vestige of his liberty. The outstanding instance of the social contract is the agreement reached between bodies of 'workmen' and bodies of managers; and the most serious obstacle to the accomplishment of social or real personal freedom between these two social functions is the class of owners which intervenes between them. The mere owner has, as has been shown, no lawful existence, and in the interest of ultimate order must be eliminated. There can be no place in the right order for the mere owner. It is of no special consequence that the 'meeting of wills' is in no case perfect or final, nor that such unity of end

as is attained is accomplished negatively by the attrition of forces. The end of the whole which declares such arrangements 'affected with a public interest' has already made necessary the adoption of the principle of 'collective bargaining,' however slowly may be the process of interpreting such situations in terms of community of interest. Subjective interest in such engagements is giving way to objective right, and this is a significant approach to the ideal of the reign of law. Such engagements as are made between the miner's union and the operator's association bear slight resemblance to the 'contract' of the old legal theory, and they have more appropriately been called "compacts equivalent to laws."¹ The arrangements which the ordinary citizen can and must enter into with a public utility company show characters which have no close resemblance to the 'terms' of a contract; and while its mediation through a public agency will continue to show vicious effects of blind authority until the intervening private owner is eliminated, it is of the form of our future freedom. The citizen's application for service and the corporation's response with a fixed set of conditions, which often are themselves laid down by a commission representing the public, show little kinship with the essentials of a contract² as these are enumerated in the law books. What such an arrangement does indicate is that a general policy of mutuality of action is established among a variety of social functions, with the invariable presence of the 'public' representing the whole. And each of these social functions represents roughly a class of persons whose interests and rights are identical in that they bear identical relations with the whole through their normal activities. The elimination of the owner on such principles as are laid down in the preceding chapter will remove the stigma which now attaches to these functional classes and which precipitates them in 'social strata.' Such co-operative or social contracts among "non-sovereign law making bodies"³ cover the vast majority of the ordinary activities of the modern man, and are the source from which his rules of life are largely drawn. And if we can, as I think we must, include the individual's relations with his church, his club, etc., along with the eco-

¹ Duguit, *Progress of Continental Law in the 19th Century*, p. 120.

² Cf. Pollock, *Contract*, Ed. 2, p. 5.

³ Dicey, *Law of the Constitution*, 5th edition, London, 1897, pp. 78f and 142.

conomic relations in a general category of social functions, we may say with confidence, I think, that the source of the law of his life is to be found within the system of institutionalized functions through which his purposes are made possible of fulfillment, and the law will appear to him not as an impending destiny of doom but as the perfected will of the Person which represents or is the reality of the whole. "There is no longer any reason why one source of the law should not be those rules of conduct established by a compact between groups of society and sanctioned by the internal forces of government." ¹

¹ Duguit, *Progress of Continental Law in the 19th Century*, p. 124.

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